

SUPREME COURT OF INDIA

Ramchandra Mahadev Jagpat

Vs.

Chief Executive Officer

S.L.P. (C) No.10281 of 2006

(DR. A. R. Lakshmanan and Tarun Chatterjee, JJ.)

07.11.2006

JUDGEMENT

DR. A. R. LAKSHMANAN, J.:-

1. I.A. No.1 for impleadment is ordered on 10.07.2006. M/s. Sigtia Construction Company Private Limited was impleaded as respondent No. 5 in Special Leave Petition No. 10281 of 2006.

2. I.A. No. 3 of 2006 was filed by the applicant-M/s. Sigtia Construction Company Private Limited to recall the order dated 27.06.2006 passed by this Court in Special Leave Petition No. 10281 of 2006. The order passed by this Court in Special Leave Petition No. 10281/2006, dated 27.06.2006 reads thus :

"O R D E R

Heard Mr.L.N.Rao, senior advocate for the petitioners. Mr. Sanjay V. Khande, Mr.B.S.Rao and Ms.

Indra Sawhney, advocates accepts notice on behalf of respondent Nos.1 to 3. We also heard their submissions.

By a prayer for interim relief, the petitioners seek direction directing the Slum Rehabilitation Authority to issue a Letter of Intent in favour of M/s. Keya Developers and Construction Company (P) Ltd. For undertaking re-development work in the slum situated at Irla Tank, S.V. Road, Vile Parle (West) Mumbai.

The grievance of the petitioners is that despite no legal impediment, the Slum Rehabilitation Authority was not issuing the Letter of Intent in favour of M/s. Keya Developers and Construction Company (P) Ltd. despite a request made by the Society. According to them, it was merely a case of replacement of previous developers M/s. Sigtia Construction Company Pvt. Ltd. who had not even started the project even after almost eight years and whose agreement with the Society had come to an end by efflux of time.

Mr. Sunil K.Varma, advocate, appears for the Chief Executive Officer, Slum Rehabilitation Authority, Bandra (E), Mumbai (respondent No.1). The learned counsel submits that the Slum Rehabilitation Authority will issue proper orders within two weeks from today. In view of the submission made by the learned counsel for respondent No.1, we direct the Slum Rehabilitation Authority to issue the Letter of Intent in favour of M/s. Keya Developers and Construction Company (P) Ltd. which is also represented by Mr. Jaideep Gupta, learned senior counsel and the Society is represented by Mr. P.K. Ghosh, learned senior counsel.

The Special Leave Petition is disposed of accordingly."

3. The reasons for recalling the order as stated in I.A.No. 3 of 2006 are as under :-

The applicant Sigtia Construction Company Private Limited (in short "Sigtia") was appointed as developer by the Vile Parle Prem Nagar Co-operative Housing Society Limited (hereinafter called "Society" the respondent No.2). The applicant who is directly affected by an order appointing M/s. Keya Developers and Construction Private Limited (in short "Keya") as Developer was not made a party respondent in Writ Petition No. 1277 of 2006 and also in the Special Leave Petition No. 10281 of 2006 although the applicant was a party in the previous proceedings, namely, Writ Petition No. 988 of 2004 which was filed before the High Court and the Special Leave Petition No. 11318 of 2005 and 19848 of 2005. According to the applicant, the respondents in the Special Leave Petition No. 10281 are not contesting respondents and particularly respondent No.1-the Slum Rehabilitation Authority (in short "SRA") had taken a stand before this Court in earlier round in Special Leave Petition No. 19848 of 2005 by way of an affidavit that they will abide by any orders which may be

passed by this Court. Nobody appeared for Bombay Municipal Corporation on 27.06.2006. Therefore, there was nobody present who could have opposed the passing of the order. The applicant, against whom allegations were made, was not made a party to the special leave petition. It was the duty of the petitioner in the special leave petition, to make the applicant-Sigtia, who is directly affected, a party to the special leave petition. However, instead of doing that this Court was given the impression that all the affected parties were before this Court.

4. Mr. Arun Jaitley, learned senior counsel appearing for the applicant-Sigtia made the following submissions as to why the order dated 27.06.2006 in Special Leave Petition No. 10281 of 2006 should be recalled.

a) M/s. Sigtia was appointed as developers in respect of Slum Rehabilitation Scheme of the property in the Suburban district of Mumbai at Irla Tank by the general body of the proposed Prem Nagar Housing Society;

b) Sigtia submitted the proposal for re-development of the slum known as Prem Nagar situated at Vile Parle (W), CTS No. 439-442; 446-448; 451-1-15, 452, 453, 454A under Slum Rehabilitation Scheme on 11.09.2002 with the consent of 1054 hutment dwellers;

c) In all 1054 individual agreements and consent affidavits were filed by slum dwellers in favour of Sigtia before the SRA and approved by the Additional Collector (Encroachment) by its order dated 23.01.2003;

d) When the applicant was about to get the Letter of Intent, the Writ Petition No. 988 of 2004 was filed on 31.03.2004 before the High Court of Bombay by Mr. Nazir Khan Yakub Khan and 8 other slum dwellers challenging the appointment of Sigtia as developer to undertake the re-development of the slum area on the ground that Sigtia was having neither technical expertise nor financial capability to complete the project.

e) In the above writ petition, the Chief Promoter of the Society filed two affidavits before the High Court dated 07.06.2004 and 29.06.2004 expressing confidence and faith in the technical and financial capability of Sigtia to execute the project. The Chief Executive Officer, SRA also filed additional affidavit on 11.02.2005 supporting the scheme in totality.

f) The High Court, while dismissing the Writ Petition No. 988 of 2004 on 11.03.2005 directed the SRA to put additional conditions as follows :-

a. Obtaining security deposit of Rs. 2.5 crores from the developer to safeguard the interests of the Slum Dwellers.

b. Supervision by the Senior Engineer of Bombay Municipal Corporation at the cost of the developer.

c. No construction of sale component till all the slum dwellers are rehabilitated in the new buildings, and

d. Undertaking/ indemnity from the developer for fulfilling the above three conditions.

5. Out of 9 petitioners in Writ Petition No. 988 of 2004, one Nazir Khan Yakub Khan alone filed a Special Leave Petition No. 11318 of 2005 challenging the order of the High Court passed in Writ Petition No. 988 of 2004. Sigtia was impleaded in the special leave petition as Respondent No.7. The Special Leave Petition was withdrawn by the petitioner on 26.09.2005. 4 other petitioners out of original 9 filed Special Leave Petition No. 19848 of 2005 challenging the order in Writ Petition No. 988 of 2004 and obtained interim stay on 19.09.2005 from this Court. Due to the abovesaid stay order, Sigtia could not take any further steps towards the implementation of the project. The stay order continued till 13.04.2006 on which date this Court dismissed the Special Leave Petition No. 19848 of 2005 as withdrawn.

6. During the pendency of the Special Leave Petition No. 19848 of 2005, counsel of Prem Nagar Co-operative Housing Society gave notices dated 26.04.2005 and 06.06.2005 purporting to revoke the development agreement and the Power of Attorney executed in favour of Sigtia. By letter dated 15.06.2005, Sigtia gave reply questioning the authority of the persons purporting to terminate and revoke the said development agreement and Power of Attorney.

7. A public notice dated 05.09.2005 was issued by the Vile Parle Society referring to the termination of the development agreement and power of attorney by the Society. The Management of the society also decided to appoint one M/s. Keya Developers (in short "Keya") to execute the project and intimation to this effect was sent to SRA by way of an application.

8. In the above special leave petition, certain interlocutory applications were filed by some hutment dwellers praying for directions to SRA to examine and consider the proposed scheme for

rehabilitation submitted by M/s. Keya. These IAs were dismissed along with the special leave petition.

9. The very same slum dwellers filed Writ Petition No. 1277 of 2006 seeking the same prayer alleging that Sigtia did not commence re-development of the properties in terms of the agreement entered into with SRA and was never interested in re-development of the said property for the benefit of slum dwellers. Sigtia was not made a party to this writ petition.

10. Sigtia wrote a letter to the CEO, SRA on 25.04.2006 stating that Sigtia was keenly interested in developing the Vile Parle Slum and would take immediate steps to deposit Rs. 2.5 crores by SRA in the matter and also would furnish indemnity as required by SRA. On 04.05.2006, the High Court passed an order in Writ Petition No. 1277 of 2006 directing the SRA to call the parties in terms of the judgment of the Court.

11. On 02.06.2006, Sigtia wrote a letter to the SRA stating that Keya had obtained the order dated 04.05.2006 from the High Court in Writ Petition No. 1277 of 2006 and that the applicant was not made a party to the writ petition and, therefore, they were not heard at all and requested the SRA to postpone the hearing fixed on 03.06.2006 to enable Sigtia to move the High Court. However, there was no response from the SRA.

12. On 02.06.2006, Sigtia wrote a letter to SRA enclosing a cheque for a sum of Rs. 2.5 crores towards the interest free deposit with SRA as the performance related guarantee as directed by the High Court in its judgment dated 11.03.2005. The Law Officer of SRA conveyed to Sigtia that the cheque for Rs. 2.5 crores could not be accepted by SRA as there was no specific order of the High Court to accept Rs. 2.5 crores from Sigtia. The Principal Secretary, Housing Department in compliance with the order dated 11.03.2005 issued clear directions to SRA to issue Letter of Intent in favour of Sigtia. On 21.06.2006, the petitioners in the Writ Petition No. 1277 of 2006 filed special leave petition before this Court against the order dated 04.05.2005 and by way of interim relief prayed that SRA be directed to issue Letter of Intent in favour of Keya. Sigtia was again not made a party in the special leave petition.

13. This Court, on 27.06.2006, passed an order directing SRA to issue Letter of Intent in favour of Keya within two weeks.

14. Mr. Arun Jaitley, learned senior counsel strenuously contended that before issuance of the Letter of Intent certain conditions ought to be fulfilled by a developer as per the rules and regulations of SRA and as per the guidelines and regulations of SRA, a developer needs to obtain Annexure-II and Annexure-III from SRA. Annexure-II is issued when the developer shows that he has consent from

at least 70% eligible hutment dwellers and Annexure-III is issued when SRA is satisfied about the financial and technical capability of the developer. It is not disputed that the applicant has obtained both the Annexures and therefore there is no reason for not issuing LOI to the applicant. It is submitted that the Keya Developer does not have consent of at least 70% hutment dwellers and therefore is not entitled to get LOI issued in its favour for the said project. Moreover SRA having been set up by the State in exercise of its powers under the Slum Act, it is ultimately for it to decide as to who should be permitted to undertake the redevelopment of slum and the SRA has shown confidence in the applicant by filing affidavits before the Bombay High Court in Writ Petition No. 988 of 2004.

15. According to Mr. Arun Jaitley, the purported termination of the development agreement with Sigtia by the society is illegal, without authority of law as the society has no authority to do so. It is further submitted that 1054 slum dwellers filed consent affidavits in favour of the applicant in the year 2002 itself and therefore the Chief Promoter and few Committee members of the Society cannot terminate the appointment of the developer. In fact the original Writ Petitioner who filed Writ Petition No. 988/2004, namely, Nazir Khan Yakub Khan and others made serious allegations against the Chief Promoter-Shri Vichare and few Managing Committee members that they have manipulated the records and got the extra units to their family members.

16. He would further submit that as per Section 3(k) of the Maharashtra Slum Area (Improvement, Clearance and Re-development) Act, 1971, the SRA is bound to follow the directions given by the Government of Maharashtra for the implementation of provisions under the Act and that the Government issued directions to SRA to issue letter of intent to Sigtia way back on 20.06.2005 but those directions have not been complied with. Mr. Jaitley further submitted that the main grievance of the slum dwellers in the I.As. filed in this Court and in the Writ Petition No.1277 of 2006 is that no steps have been taken by Sigtia Constructions towards the completion of the project. It is submitted that after obtaining Annexure-II and Annexure-III from SRA, when the applicant was about to get LOI the Writ Petition No. 988 of 2005 was filed on 31.3.2004 challenging the technical and financial capability of the applicant. After the said Writ Petition was dismissed, the applicant approached SRA many times to get LOI but it received no response and this fact has been recorded by the Principal Secretary, Housing in its order dated 20.06.2005. Thereafter, stay order was passed by this Court in SLP(C) No.19848 of 2005 staying the order of the High Court dated 11.03.2005 passed in Writ Petition No. 988 of 2004. After the said SLP was dismissed by this Court on 13.04.2006 the applicant has written several letters to SRA to issue LOI and also sent a cheque of Rs. 2.51 crores but the same was not accepted by SRA. That there has been no delay on the part of the applicant in the implementation of the development work but it is due to frivolous litigations filed by some slum dwellers who were put up by rival developers that the project was stalled.

17. Mr. Arun Jaitely further submitted that the applicant was a necessary party in the Writ Petition No.1277 of 2006 and also to the above special leave petition as it was appointed as developer by the society and is at having consent of more than 70% of the slum dwellers in the area and therefore, any order passed issuing Letter of Intent to some other developer gravely injures the applicant and therefore no such order can be passed without giving an opportunity to the applicant to be heard.

18. Concluding his arguments, Mr. Jaitley submitted that the order has been obtained behind the back of the applicant-Sigtia and that the order is contrary to the order of the High Court dated 11.03.2005 passed in Writ Petition No. 988 of 2004 which has become final with the dismissal of Special Leave Petition Nos. 11318 of 2005 and 19848 of 2005.

19. In this context, Mr. Arun Jaitley invited our attention to the order dated 11.03.2005 passed in Writ Petition No. 988 of 2004.

20. At the time of hearing, Mr. Jaitley also invited our attention to the order passed by the High Court in Writ Petition No. 1277 of 2006 dated 04.05.2006. It is useful to reproduce the said short order which reads thus :

"CORAM: F.I. REBELLO and ANOOP V. MOHTA, JJ.

DATE: 4th May,2006.

P.C. :

In the ordinary course, we would not have entertained this petition when there is a society who is responsible for the development. However, on behalf of respondent No.2, their learned counsel makes a statement that they had already communicated to Respondent No.1 to appoint respondent No.3 as a developer and that the application is pending before the Respondent No.1 pursuant to the termination of the first developer by Respondent No.2. The respondent No.1 to call the parties in terms of the judgement of this court and after hearing the parties, dispose of the application of Respondent No.2 according to law within the period of six weeks from today.

(F.I. REBELLO, J.) (ANOOP V. MOHTA, J.)"

21. He also drew our attention to para 12 of the order in Writ Petition No. 988 of 2004 passed by the High Court which reads thus :

"The SRA having been set up by the State in exercise of its power under the Slum Act, it is ultimately, for it to decide as to who should be permitted to undertake the redevelopment of slum. In

this behalf, perusal of the relevant statutory provisions including Section 13 would make it abundantly clear that the SRA is empowered to permit landholders or occupants of an area which is declared as slum rehabilitation area to undertake scheme of development of such land and if they do not come forward with a scheme for redevelopment within a reasonable time, the SRA may decide to redevelop such land by entrusting it to any other Agency. In the instant case, respondent No.7 has been selected by respondent No.6. The SRA is satisfied that the requisite 70% numbers/occupiers of slum area have come forward and reposed confidence in respondent No.7. Since petitioners raised objections to the capacity and capability of respondent No.7, this Court issued directions that these aspects be scrutinized and verified once again. Even that exercise is now complete and a report is submitted by the CEO of SRA. In such circumstances, we are of the view that all aspects have been considered by the SRA and its decision cannot be faulted. Moreso, when the proposal is at a primary stage."

22. Our attention has also been drawn to the order of this Court in Special Leave Petition No. 19848 of 2005 dated 13.04.2006 dismissing the writ petition as withdrawn filed by Mr. Nilesh Wakadey and Ors. preferred against the judgment and order dated 11.03.2005 in Writ Petition No. 988 of 2004. Likewise, Special Leave Petition No. 11318 of 2005 filed against the very same order in writ petition No. 988 of 2004 was also dismissed as withdrawn.

23. We may also usefully refer to the letter dated 02.06.2006 of Sigtia addressed to SRA, the relevant portion of which reads thus :

"In this connection, we wish to submit that M/s. Sigtia Construction Pvt. Limited is bound by the directive and conditions in the High Court Judgment dt. 11.3.2005 and also by the guidelines of the SRA for the development of the Vile-Parle (W) Slum project. As such, the company will be complying with all the conditions recommended by the SRA and accepted by the Hon'ble High Court.

In pursuance of the said High Court order dt.11.3.2005, M/s. Sigtia Construction Pvt. Ltd. is hereby depositing a sum of Rs.2,50,00,000/- (Rupees Two Crores Fifty Lakhs only) drawn on Standard Chartered Bank, Santacruz (W) Branch, Mumbai vide Cheque No.991396 dt. 2.6.2006 towards the interest free deposit with SRA as the performance related guarantee as directed by the Hon'ble High Court in its landmark judgment dt.11.3.2005. The SRA may put it in its fixed deposit account, as it may deem fit.

Besides interest free deposit of Rs. 2.5 crores, M/s. Sigtia Construction Pvt. Ltd. will comply with and abide other conditions such as-

(a) First we will construct Rehab portion in all respect and then ask permission of sale portion.

(b) We accept the Supervision of B.M.C. Engineer who will monitor the project.

(c) We will give required undertaking/indemnity bond etc. as directed by Hon'ble High Court and as desired by SRA."

24. We may also refer to the proceedings of the Principal Secretary, Housing Department, Government of Maharashtra on the representation received from Sigtia and the orders passed thereunder. The relevant portion reads thus:-

"In view of the above, I, N. Rama Rao, Principal Secretary, Housing Department, Government of Maharashtra, in the capacity of the Administrative Head of the Department, direct that

(1) LOI be issued in favour of Sigtia Constructions Pvt. Ltd. who have a joint venture agreement with Spark Developers as stated above and who had completed all the formalities to ensure the implementation of the project without permitting any further delay

(2) The CEO, SRA is further directed to comply with the other directions and suggestions given by the Hon'ble High Court in its order dated 11.03 2005.

(3) The Developer also, hereby directed to comply with the conditions imposed by the Hon'ble High Court in the said order."

25. It is to be noted that this order was not challenged before any forum.

26. Our attention was also drawn to the notice dated 26.04.2005 issued by Mr. Suresh P. Chaugule to Sigtia and the further notice dated 06.06.2005 by the very same advocate to the Chief Officer, Slum Rehabilitation Authority on termination of appointment of developer. A copy of the same was also marked to Sigtia Constructions. Our attention was also drawn to the IA No. Nil of 2006 filed by Nilesh Wakade and Ors. in Special Leave Petition (C) No. 19848 of 2005 in which Babita Baliram Tambe and Ors. as applicants made the following prayer in the above I.A. :

"PRAYER

Thus, in the facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to :-

(a) Direct that the rehabilitation of the slum area in question is carried out at the earliest;

(b) Direct M/s. Keya Developers and Construction Pvt. Ltd. Developers and Construction (P) Ltd., Tardeo Air-conditioned Market, Tardeo, Mumbai-34 to produce its proposed Scheme for Rehabilitation;

(c) Direct the Respondent Authorities to forthwith examine and consider the said proposed Scheme for Rehabilitation submitted by M/s. Keya Developers and Construction Pvt. Ltd. Developers (P) Ltd; and

(d) If the above scheme is approved by the Respondent No.2, then the Respondent Authorities and the developer be directed to forthwith implement the Scheme in a time bound manner subject to such terms and conditions as this Hon'ble Court may deem fit and proper."

27. It was also brought to our notice about the undertaking given on the stamp paper by the Chief Promoter and Members of the Managing Committee of Vile Parle Prem Nagar Co-operative Housing Society who declared as under :-

"(1) That the General Body of the Vile Parle Prem Nagar Co-operative Housing Society (Proposed) in their meeting held on 8.9.2001 has confirmed the appointment of M/s. Sigtia Construction Pvt. Ltd. as our Developer and Shri Bipin Khatri as Architect of the S.R.A. project to be undertaken by our society.

(2) That in pursuance to the above appointments of the Developer and the Architect, both agencies have carried out voluminous work in connection with the formulation of S.R.A proposal and to submit the same to the office of S.R.A. For doing this they had to obtain, the necessary undertakings from over 1000 hutment dwellers on Rs.20/- stamps paper, surveying the area by appointing Surveyor, preparation of plans and other relevant documents for obtaining Annexure-II. The

developer has obtained Annexure-II and submitted the required information in Annexures I and III to the office of S.R.A. for issuance of Letter of Intent to our S.R.A. proposal in shortest possible time with active support from the society and we are satisfied with their performance in this regard.

(3) That we have not engaged any other Developers or the Architect. This question did not arise since the present Developer and the Architect have done their duties to the expectation of the Society. While carrying out the job by the Developer and the Architect they have carried out the job with due consultation with the Society and have kept us informed of the progress of the work from time to time.

(4) That the Society hereby confirm and undertake to continue the Developer M/s. Sigtia Construction Pvt.Ltd. and the Architect Mr. Bipin Khatri as our Developer and Architect respectively till the completion of the S.R.A. project under D.C. Regulation 33(10) undertaken by our Vile Parle Prem Nagar Co-operative Housing Society (Proposed).

For Vile-Parle Premnagar Co-operative Housing Society (Proposed).

Sd/-

Shamrao A. Vichare

Chief Promoter

Date : 26.2.2004"

28. Mr. Goolam E. Vahanvati, learned Solicitor General appeared for the Slum Rehabilitation Authority. He placed before us the Maharashtra Slum Areas (Improvement, Clearance and Re-development) Act, 1971. He also invited our attention to the procedure for submission, processing and approval of Slum Rehabilitation Schemes which reads thus :-

"1. All slums and pavements whose inhabitants' names and structures appear in the electoral roll prepared with reference to 1st January, 1995 or a date prior thereto and who are actual occupants of the hutments are eligible for the slum rehabilitation scheme.

2. 70% or more of the eligible hutment-dwellers in a slum or pavement in a viable stretch at one place have to show their willingness to join slum rehabilitation scheme and come together to form a co-operative housing society of all eligible hutment-dwellers through a resolution to that effect. The following resolution should be adopted:

(a) Resolution electing a Chief Promoter.

(b) Resolution giving the chief promoter authority to apply for reservation of name for co-operative housing society.

(c) To collect share capital (Rs. 50/- per member for slum societies) and Re. 1/- as entrance fee and to open account in Mumbai District Central Co-operative/Maharashtra State Co-operative Bank Ltd. (any branch)

3. The chief promoter, office bearers and the members of the proposed society should collect the documents such as 7/12 extract and the PR card of the plot on which the slum is situate. They should then get the plot surveyed/measured and prepare map of the plot showing slum structures therein with the help of surveyors attached to the office of Additional Collector (Encroachment) or the Deputy Collector (Encroachment) of the zone.

4. While undertaking the survey, they should collect the information of the proposed members/slum-dwellers and fill up land occupied by the slum-dwellers, number and type of structures such as residential, industrial, commercial, amenity structures etc. and the list of eligible and ineligible occupants and consent of the slum-dwellers to join the scheme. Earlier the promoter/co-operative housing society had to first approach the different Competent Authorities namely Additional Collector for the slums on government and private lands and the land owning authorities for the slums on different public authority lands, for obtaining certified Annexure-II, before they could put in application for slum rehabilitation scheme SRA. As a simplification measure, this procedure is now discontinued and Annexure-II format is now required to be filled by the promoter/co-operative housing society itself for submitting building proposal to SRA, so that the scrutiny of the proposal and certification of Annexure-II can start simultaneously. Annexure-II needs to be submitted in duplicate. As a measure of further simplification, Additional Collector (Encroachment) is being designated as the sole Competent Authority for deciding eligibility and for taking eviction action against non-participants in slum rehabilitation schemes."

5. The chief promoter and the office bearers of the proposed society should then apply for name

reservation of the proposed co-operative housing society along with the self-prepared Annexure-II and the required resolutions to the Assistant Registrar of Co-operative Societies. To facilitate this, office of the Assistant Registrar has been started in SRA itself. It is no longer necessary to approach different offices of the Co-operation Department for this purpose. The assistant Registrar/SRA will issue a letter reserving the name for the proposed co-operative housing society and permission to open a bank account in the proposed society's name.

6. While the above steps are being taken, the decision to search a competent developer to act as a promoter has to be taken up by the proposed co-operative housing society of slum-dwellers. The society itself or an NGO/developer/owner can take up slum rehabilitation scheme as a promoter.

7. The promoter so chosen has to enter into agreement with every eligible slum-dweller while putting up slum rehabilitation proposal to SRA for approval. SRA is in the process of trying to evolve standard formats for the following four types of agreements required in the scheme, with the approval of the State Government.

a) Consent-cum-agreement between the promoter and the slum-dwellers.

b) Development rights/Agreement to lease between the promoter and the land owning authority.

c) Lease agreement between the land owning authority and the co-operative society of slum-dwellers.

d) Lease agreement between the land owning authority and the co-operative society of free-sale tenement buyers.

8. The promoter has also to appoint an architect in consultation with the proposed co-operative housing society of slum-dwellers to prepare the plans of development of the slum area as per the DCR-33(10). It is expected that the architect ensures community participation in preparation of the building plans. All required documents such as building plan, layout plan, PR Card etc. along with Annexure-I, Annexure-II and Annexure-III are to be submitted to SRA by the architect along with an application for the slum rehabilitation scheme. A checklist of all such documents required for submission is available in SRA office.

10. Annexure-III is prescribed to assess the financial capability of the promoter. The items contained in Annexure-III are self explanatory. Keeping in view the sensitivity of this information, it is kept strictly confidential by SRA.

11. After a pre-security by a designated engineer of SRA, to ensure completeness of the proposal submitted, so far as documents are concerned, proposals are accepted. Then a computerized file number is allotted to the scheme on payment of scrutiny fees which are charged at half file number is allotted to the scheme on payment of scrutiny fees which are charged at half the rate of the Municipal Corporation's general building permission fees. Upon acceptance, the scrutiny of Annexures, I, II and III start simultaneously in the building permission Wing, Eligibility Certification Wing and Accounts and Finance Wing respectively."

29. He also invited our attention to para 18 of the order in Writ Petition No. 988 of 2004 dated 11.03.2005.

"In the affidavit filed on 11th February, 2005 the SRA has further pointed out that the Slum Rehabilitation Scheme proposal is at primary scrutiny stage and not yet approved. They have pointed out that eligibility of the members of Managing Committee of respondent No.6 shall be thoroughly scrutinized by the Slum Rehabilitation Authority before issuing LOI and in any case within eight weeks from the date of this affidavit. Mr. Singh appearing for 7th respondent makes a statement that the developer will file necessary undertaking as per para No.7 of the affidavit dated 11th February 2005 of SRA, within such time as is stipulated by it. He has also agreed to file an undertaking in terms of para 7 of this affidavit in this Court in case the Letter of intent is issued in favour of respondent No.7. He has also agreed to furnish indemnity as insisted by SRA."

30. He also specifically drew our attention to the order dated 11.03.2005 in Writ Petition No. 988 of 2004 and the order dated 04.05.2006 in Writ Petition No. 1277 of 2006 and also the application for direction filed by Babita Baliram Tambey on the prayer made by him in the IA in special leave petition No. 19848 of 2005. The said Babita Baliram was also petitioner No. 10 in Writ Petition No. 1277 of 2006 which was verified in April, 2006 whereas the final order in the said writ petition was made on 04.05.2006. Concluding his arguments, the learned Solicitor General submitted that as per the guidelines there are several conditions to be fulfilled by the slum dwellers/proposed society as well as by the proposed developer and remarks required to be obtained on the proposal from concerned authorities before issuing Letter of Intent. The SRA also to verify the resolution passed by the general body of the slum dwellers, proposed society by majority for appointing or replacing the developer for the development of the scheme. It is also necessary to verify by the SRA to see whether the plot under the development is not affected by any reservation such as playground or recreation ground in view of the interim stay order in writ Petition No. 1152 of 2002 of the High Court. The SRA has to verify whether the proposed appointed developer has the financial capacity to undertake and complete the same. Therefore, in the context of the submissions made above by the learned Solicitor General further directions with regard to this Court's order dated 27.06.2006

should be given to SRA. As already noticed, the writ petition No. 1277 of 2006 was filed by the very same petitioner in SLP No. 10281 of 2006. Sigtia was not made a party to the writ petition No. 1277 of 2006. However, the High Court, by order dated 04.05.2006 in writ petition No. 1277 of 2006 has directed the SRA to call the parties in terms of the judgment of the High Court dated 11.03.2005 in writ petition No. 988 of 2004 and after hearing the parties disposed of the application of the society respondent No.2 according to law within 6 weeks from 04.03.2006. It is also useful to refer to the direction given in the order dated 11.03.2005 in para 20 in writ petition No. 988 of 2004. The High Court, by the said order, has observed that it is not necessary to quash or set aside the Scheme or issue further directions as sought and that final approval have not been granted by SRA and if SRA decides not to issue the Letter of Intent in favour of respondent No.7 (Sigtia), it will always be open for the parties to submit a fresh development scheme. In view of the order dated 11.03.2005 and 04.05.2006 of the High Court, the learned Solicitor General submitted that the SRA has to call both Sigtia and Keya in order to dispose of the application of the society according to law.

31. Mr. Harish Salve appearing for the petitioner in special leave petition Shri Ramchandra Mahadev Jagpat submitted that SRA cannot decide any contractual dispute and that the order dated 11.03.2005 put certain obligations on Sigtia and that the Society in its general body meeting dated 29.05.2005 terminated the agreement with Sigtia and decided to invite other builders. In this context, he drew our attention to the unanimous resolution passed by the Society in regard to the appellant of Keya for the development of slum property at Premnagar dated 10.06.2005. This letter dated 10.06.2005 was addressed to Keya Developer and Construction Company, Mumbai. The letter reads as follows :

"We are informing hereof that the Managing Committee had decided in the meeting held on 6th June, 2005 Monday at 8.00 p.m. vide Resolution No.6 to develop the property bearing C.S. Nos. 439,439-1 and 2,440-1 to 6,441, 441-1 to 3,442,442-1 to 3,443,443-1 to 15,444,444-1 to 6,446,447, 447-1 to 3,448,448-1 to 5,451-1 to 3,452-1 to 24,453,453-1 to 5,454(A), Irla, Vile-Parle (West) in the District of Mumbai, the area is 28200 sq. mtrs. And the owner is the Mumbai Municipal Corporation. This land be declared Slum as per Slum Act 1971 Sub-section 4 (1). You are appointed to re-develop the said property as per Maharashtra Government Rules and Regulations. In the subject-matter we are enclosing herewith the true certified copy to you. You are requested to intimate your consent in this regards and co-operation.

True Extract of Resolution No. 6 of General Body meeting held on 8th June 2005 at 8.00p.m. Committee Office RESOLUTION No.6.

Resolved that M/s. Keya Developer and Construction Pvt.Ltd. Having its office at 302, Tardeo Air Condition Market, Tardeo Road, Mumbai-400024 is and be appointed as Developer to develop the slum property by providing permanent alternate accommodation of 225 sq.ft. Carpet Area to all eligible Slum dwellers and to sell balance from sale component in open market as per O.C.R.33 (10)

of 1991. Also power care given to said developer to enable him to exercise the powers for the development of the said property. This appointment will remain in force and valid till entire Project is successfully completed in all respect as tenant are handed over to all slum dwellers. No any Managing Committee, existing or forthcoming, shall have any right to change the developer under any circumstances whatsoever may be the nature.

Proposed By: Mrs.Sandhaya Ketemkar

Seconded By: Mr. Sanjay Kadam

RESOLUTION UNANIMOUSLY PASSED

Sd/-

(Mr. Shamrao Vicharee)

Chief Promoter"

32. He also drew our attention to the subsequent events in the appointment of Keya Developers and the letter dated 10.06.2005 issued to Keya Developers made in the I.A. in 19848 of 2005 filed by Babita Baliram. He also invited our attention to the second round of litigation on the non-deposit of the amount by Sigtia. He also submitted that Sigtia have acted on termination and have not challenged the termination of the agreement.

33. Mr. Salve also submitted that there is no question of fraud having played upon by this Court as alleged or told and that the applicant Sigtia has conveniently not mentioned that his agreement with the society had come to an end by efflux of time and stood cancelled on 24.04.2005 and that the society had also unanimously terminated the appointment of Sigtia as the developer and that the prayer in writ petition No. 1277 of 2006 was directed against the SRA and that there was no prayer or relief sought against the Sigtia and, therefore, Sigtia was not arrayed as a party in the said writ petition and that there was also no reason to make Sigtia as a party as they had been replaced by a new developer as far back as June, 2005 of which the Sigtia had notice. Mr. Salve further submitted that it is incorrect to say that the parties before this Court in special leave petition (C) No. 10281 of 2006 were not the affected parties. In fact all the parties are affected parties excepting the Sigtia who has undertaken no development work from 1997 and even after agreement dated 2002 was entered into with the society and therefore, Sigtia has no subsisting legal or other rights whatsoever and the present I.A. to recall the order deserves to be dismissed.

34. I.A.No. 9 of 2006

Mr. Dushyant Dave, learned senior counsel filed an application for impleadment in I.A. No. 9 of 2006 on behalf of Nazeer Khan Yakub Khan who is also slum dweller. Learned senior counsel

submitted even that in 1997 Sigtia was appointed by the Society as a developer for the slum and the appointment was approved by SRA. However, no efforts were taken by Sigtia for development. As per the agreement Sigtia the agreement has to complete the entire development work within 3 years and if the development work was not so completed the agreement was to be treated as cancelled automatically. It is further argued that Sigtia had taken no efforts for development of the slum and in fact had no financial or technical capability to carry out the development. Sigtia had also not deposited the 2.5 crores as interest free deposit and, therefore, the applicant in I.A. No. 9 of 2006 filed special leave petition No. 11318 of 2005 before this Court challenging the order dated 11.03.2005 and in the meantime, the agreement of Sigtia with the society to develop the slum itself came to an end on the expiry of 3 years from the date of agreement and, thereafter, the Society at a general body meeting dated 29.05.2005 resolved to terminate the appointment of Sigtia as the developer and the SRA was also informed of such decision since the appointment of Sigtia stood terminated and a new developer had been appointed the applicant Nazeer Khan Yakub Khan had no further grievance as it was apparent that the development work of the slum would finally commence and in these circumstances the applicant withdraw special leave petition (C) No. 11318 of 2005 on 26.09.2005.

35. Mr. Dave further submitted that the applicant in IA No. 9 of 2006 had always opposed the appointment of Sigtia as developers as they had no technical capability to carry out the development work and in fact undertook no work whatsoever for over 8 years to the department of the slum dwellers and other similar situate slum dwellers. It is further submitted the order in special leave petition No. 10281 of 2006 is fair and just and in the interest of the slum dwellers who will finally be able to see the development work of their slum being undertaken and that the Sigtia have no legal right for undertaking the development of the slum in view of the termination and automatic cancellation of their agreement with the Society.

36. I.A. No. 8 of 2006

The applicant is a Zuveriya Developer. Their application for intervention is allowed and Mr. Shekhar Naphade, advocate was heard on his behalf. I.A. No. 8 of 2006 was filed to recall the order dated 27.06.2006 in special leave petition No. 10281 of 2006 and allow the applicant to file a reply to the above special leave petition. We have perused the intervention application. The applicant was not a party to the earlier writ petition. The applicant put up a proposal to the Municipal Corporation of Greater Bombay being the competent authority under the act expressing its willingness to re-accommodate the hutment dwellers and offered to give certain portion of plot of land to Municipal Corporation free from encumbrances as per the Slum Rehabilitation Scheme. The Managing Committee of the original society have executed an agreement dated 16.07.1997 that the applicant and gave development rights in favour of the applicant for the development of the property. They have also issued general Power of Attorney in favour of the applicant. The Addl. Collector (Encroachment) has fixed the hearing for the purpose of issuance of Annexure-2 when one M/s. Sigtia Construction Pvt. Ltd. intervened in the matter by representing that another society by name Ville Parle Premnagar Co-operative Society (proposed) had appointed the said Sigtia as developer. The applicant was not a party to the writ petition No. 988 of 2004 filed by some of the hutment

dwellers not to issue annexure-3 and Letter of Intent in favour of Sigtia. The applicant or the original society was not a party to the said writ petition upon knowledge the applicant has taken out chamber summons in the petition to intervene in the matter. The High Court dismissed the writ petition and also the chamber summons as it was too late for the applicant to apply to join as party to the said writ petition. The applicant again made a representation to the SRA. The applicants are agreeable to obtain similar agreement from slum dwellers in support of the said proposal with a view to develop the property.

37. Writ petition No. 1277 of 2006 was also filed by the petitioners without impleading the applicant before the High Court. It is submitted without making the applicant a party the petitioner has obtained an order dated 27.06.2006 whereby this Court has directed the SRA to issue a Letter of Intent in favour of Keya Developers. Hence the applicant is making the present intervention application for recalling the said order dated 27.06.2006. In our opinion, the above I.A. has no merits and is belated. No relief can, therefore, be granted to the applicant. I.A. No. 8 of 2006 stands dismissed.

38. Dr. Abhishek Singhvi, learned senior counsel appearing for Keya Developers submitted that Sigtia did not take any recourse to any legal proceedings to challenge the termination and by letter dated 10.06.2005 Keya was informed of the resolution appointing it as developer to develop the property on the terms and conditions mentioned therein. In view of the termination of Sigtia as developer two groups of slum dwellers who had filed special leave petition before this Court against the order of the High Court dated 11.03.2005 withdrew the special leave petition on 26.09.2005 and 13.04.2005 respectively. Sigtia was represented in the proceedings and did not represent the factum of expiry/termination of the agreement between Sigtia and the society. Keyas since the intimation of the resolution of the society has been taking all steps within its power to prepare for the development of the property including the appointment of M/s. Anil Chawla and Associates as architects and made arrangements for a transit camp for residence of the members of the society during the period of re-development. The Keya's has also made arrangements with HDFC Bank Ltd. for provision of loan of over Rs. 12 crores towards the implementation of the project and is also ready and willing to deposit such amount as this Court may determine by way of security deposit. Keyas has also approached the SRA for grant of Letter of Intent in its favour for the purpose of transit accommodation and has also already incurred an expenditure of Rs.45,56,720/- Keyas has also not been served with any notice or order of any Court with respect to any challenge to the termination of the Sigtia or appointment of the Keyas as developer of the property. In these circumstances, Dr. Singhvi submitted that the SRA was bound to consider the application for issue of Letter of Intent to Keyas and Keyas has also been approached from time to time by the society and its members for taking further steps to commence the actual work of re-development of the property. However, Keyas was unable to commence the actual work of re-development for want of Letter of Intent from the authority in the present special leave petition No. 10281 of 2006. This Court passed the order in the presence of the counsel for all the parties and deny that any fraud has been played upon this Court as alleged. It is further submitted Sigtia has been terminated as developer of the property long before the writ petition was filed in the High Court. According to learned senior counsel Sigtia is not a necessary party to the special leave petition and that it had the consent of more than 70% of the slum dwellers and that the same is in any event irrelevant after the termination of the contract with the society. Concluding his submission, learned senior counsel

submitted that the applicant has failed to make out any good ground for the recall of the order dated 27.06.2006 and, therefore, the said application is liable to be dismissed.

39. Mr. T. L. Nageswara Rao, learned senior counsel appearing for Vile Parle Premnagar Society submitted that in view of the termination of the agreement given to Sigtia, Sigtia is not a necessary party to the special leave petition 10281 and that the SRA should be directed to consider only the application made by Keyas.

40. We have given our anxious and careful consideration to the lengthy submissions made by all the learned senior counsel appearing for the respective parties with reference to the pleadings, annexures etc. The applicant Sigtia have explained to this Court as to how the deposit of Rs.2.5 crores was not be deposited with SRA. It also denied that the agreement entered into between Sigtia and the society came to an end on 25.04.2005 by efflux of time. In this context, Clause 22 of the agreement must be read as a whole and when so read, it would be clear that the developer was to start the actual construction after the issuance of the commencement certificate by the authority. Therefore, the period of 3 years must be construed to begin from the date when commencement certificate is issued and not from the date of execution of the agreement. It was also submitted that the letters dated 25.04.2005 and 06.06.2005 were issued by 2 or 3 members of the society who were acting with ulterior motive and in collusion with the rival developer. Even the SRA to whom the letter dated 06.06.2005 was addressed in its counter affidavit filed before this Court in the present proceedings has stated that they did not take notice of the said letter of termination as the letter was not supported by the relevant resolution of the society. After 11.03.2005, Sigtia approached the SRA on several occasions requesting for the issuance of the Letter of Intent but since no response was coming from the Housing Department of Government of Maharashtra on 10.06.1995. In our view after the dismissal of the special leave petition No. 19848 of 2005, the order of the High Court dated 11.03.2005 attained finality and there was no proposal of M/s. Keya Developers before the SRA on 13.04.2006 and, therefore, there was no question of SRA considering the proposal made by the new developer. In our view, Sigtia was a necessary party to the writ petition and to the special leave petition No. 10281 of 2006 as it directly affected by any order appointing Keya as developer. The society has also entered into an agreement and also executed an irrevocable general Power of Attorney dated 19.03.2004 wherein expressed its satisfaction with the progress in the work made by the Sigtia and also by the undertaking dated 26.02.2004 where the society undertook to continue with Sigtia as developer till the completion of the SRA project. Though it is contended by Sigtia that the termination by the society on 29.04.2005 was illegal and without authority, the Sigtia has not so far challenged the order of termination by the society. This important factor has also to be taken note of by the SRA at the time of considering the case of Sigtia along with Keya Developers. It is also stated that the consent affidavits of more than 70% of the slum dwellers had already been obtained by Sigtia. It is also submitted in the rejoinder affidavit that Sigtia did have the technical expertise and financial capability to complete the work and that all these issues were decided in favour of Sigtia by the High Court in writ petition No. 988 of 2004 by order dated 11.03.2005 which order has attained finality in view of the dismissal of special leave petition Nos. 11318 of 2005 and 19848 of 2005. Sigtia, after receiving the copy of the letters dated 24.05.2006 and 06.06.2005 sent a reply dated 15.06.2005 wherein the Sigtia submitted that the purported termination is illegal and without any authority and no further reply was sent by the society to the said letter. Moreover, in the hearing held before the Principal Secretary dated 20.06.2005, the

representative of the society made no arguments with regard to the purported termination of the agreement. Therefore, it is contended that the society has not acted on the letter of termination and that the matter has come to an end and, therefore, Sigtia did not file any petition to challenge the purported termination. It is also argued that the prayer in the writ petition No. 1277 of 2006 adversely affects the interests of the Sigtia. It is stated that with the dismissal of special leave petition No. 19848 of 2005 all the applications filed in the said petition also stood dismissed and, therefore, the petitioners in the special leave petition had no right to approach this Court by way of writ petition making the same prayer which was made in the application for directions filed in special leave petition No. 19848 of 2005 and that the effect of the order dated 13.04.2006 is that the order of the High Court dated 11.03.2005 which was not challenged in the special leave petition attained finality and that in the application for directions filed in the special leave petition No. 19848 of 2005 the society had raised the issue of termination of agreement of Sigtia and appointment of Keya developers and the same stood dismissed with the dismissal of the said special leave petition. Therefore, as rightly pointed out by Mr. Arun Jaitley in any subsequent proceedings where the termination of the agreement of applicant Sigtia with the society and replacement of Sigtia a new developer is a subject-matter, Sigtia is a proper and necessary party to it. We see much force and substance in the said argument. In our view, the applicant Sigtia has also the right to have a hearing before the SRA along with Keya Developers, the new appointee. It must also be seen that the relief sought in the special leave petition No. 10281 of 2006 though only against SRA but in effect against the applicant Sigtia and, therefore, Sigtia is the necessary party to any proceedings wherein the replacement of the Sigtia with a new developer and the termination of the agreement with the Sigtia is in issue and, therefore, Sigtia should have been made a party respondent in the writ petition No. 1277 of 2004 as well as special leave petition No. 10281 of 2006. It is also not in dispute that Sigtia was impleaded as party respondent No. 7 in the special leave petition which came to be withdrawn by the petitioner therein on 26.09.2005 on which date Sigtia appeared through their advocate in this Court. As rightly submitted by the learned Solicitor General after the withdrawal of special leave petition No. 11318 of 2005 by the petitioner-Nazeer Khan Yakub Khan both the developers i.e. M/s Sigtia and Keya Developers kept on submitting applications with the SRA. However, due to pendency of the special leave petition in this Court, SRA was not able to take any decision on the representations of the developers as well as the society. At the time of hearing, our attention was also drawn to the guidelines and the several conditions to be fulfilled by the slum dwellers/the society/as well as the developers and the remarks required to be obtained on the proposal from the concerned authorities before issuing Letter of Intent. The SRA has also to verify the resolution as passed by the general body of the slum dwellers proposed society by majority for appointing or replacing the developers for the development of the scheme. It is also necessary for SRA to verify and to see whether the plot under the development is not affected by any reservation such as playground or recreation ground in view of the stay granted by the High Court in writ petition No. 1152 of 2002 and also to verify whether the proposed appointed developer has the financial capacity to undertake and complete the scheme. Therefore, for the foregoing reasons, we hold that Sigtia is a necessary and proper party to the special leave petition No. 10281 of 2006 filed by Ramchandra Mahadev Jagpat and Ors. We say that the order dated 27.06.2006 was passed in S.L.P. No. 10281/2006 on the basis of representation made by all the respective senior counsel appearing at that time. The order was not obtained as playing fraud on Court as alleged by the applicant herein. Now, it is brought to our notice and made out a clear case as to why Sigtia was a necessary party to the special leave petition No. 10281 of 2006 and in the light of the directions given by the High Court dated 11.03.2005 in writ petition No. 988 of 2004 and of the order dated 04.05.2006 in writ petition No. 77 of 2006. We have, therefore, no hesitation to recall our order dated 27.06.2006 in special leave petition No. 10281 of 2006. Since the entire matter was argued at

length now by all the respective senior counsel, there is no necessity to rehear special leave petition No. 10281 of 2006. This apart in the concluding portion of our order dated 27.06.2006 in special leave petition No. 10281 of 2006, this Court directed the SRA to issue proper orders within two weeks from 27.06.2006. The said direction is also not correct. This Court ought to have directed the SRA, if at all, to consider issuing of the Letter of Intent in favour of Keya Developers in view of the replacement of previous Developers M/s. Sigtia.

41. We, therefore, allow the application I.A. No. 3 of 2006 filed by the applicant Sigtia and recall our order dated 27.06.2006 passed in special leave petition No. 10281 of 2006 and pass the following order :-

As directed by the order in writ petition No. 988 of 2004 dated 11.03.2005 and order dated 04.05.2006 in writ petition No. 1277 of 2006 the SRA is directed to call the two developers, namely, M/s. Keya and M/s. Sigtia and dispose of their application for issuing the Letter of Intent and to pass appropriate orders and in accordance with the Maharashtra Slum Areas Improvement, Clearance and Re-development Act, 1971 and also strictly following the procedure for submission, processing and approval of Slum Rehabilitation Scheme and to Award the Letter of Intent to the developer who satisfies the required qualifications and conditions and regulations and the provision of the Act, 1971.

42. The SRA is also directed to consider as to whether the guidelines and other conditions are fulfilled by the slum dwellers/the society/as well by the developers and issue notice to the society also and hear them and pass appropriate speaking order within 3 months from today. The above direction is issued in the larger interest of the slum dwellers and in order to rehabilitate the poor slum dwellers and needy slum dwellers at the earliest. We place on record the very valuable assistance and guidance of all the learned senior counsel rendered to this Court and, in particular, the learned Solicitor General inviting our attention to the proper procedure, guidelines and conditions to be followed by SRA while granting the Letter of Intent to the Developer.

All the IAs are disposed of as above. No costs.

Order accordingly.