

(2016) 05 BOM CK 0060
In the Bombay High Court
Case No : Writ Petition No. 1667 of 2013

Deepak Murari Shivalkar

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 05-05-2016

Acts Referred:

Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 —
Section 33

Citation : (2016) 4 AIRBomR 97 : (2017) 2 ALLMR 433

Hon'ble Judges : S.C. Dharmadhikari and A.A. Sayed, JJ.

Bench : Division Bench

Advocate : Mr. Mihir Desai, senior counsel with Mr. Sagar Takekar, Advocate. (In WP No. 1667 of 2013), Mr. E.P. Bharucha, senior counsel with Mr. H.C. Pimple, Advocate. (In WP No. 147 of 2014), for the Appellant; Mr. M.P. Jadhav, AGP. (In WP No. 1667 of 2013), Ms. G

Final Decision : Disposed Off

Judgement

S.C. Dharmadhikari, J. (Oral) - Rule in both petitions. Respondents waive service. By consent, Rule made returnable forthwith.

2. As both petitions involve common questions of fact and law, they were heard together, that we dispose of them by this common judgment.

3. By writ petition no. 1667 of 2013 under Article 226 of the Constitution of India, the petitioners seek a writ of certiorari or a writ, order or direction in the nature of the above calling for the records and proceedings of the Letter of Intent ("LOI" for short) dated 14th August, 2012, Annexure-V, Intimation of Approval ("IOA" for short) in respect of a plot of land, more particularly described in the petition and on scrutiny of all these, to quash and set aside the same.

4. It is common ground that the petitioners are occupying some structures standing on what is called as Nevatia Municipal Colony/the said property. The first respondent is the State and the second respondent is the Slum

Rehabilitation Authority (for short "SRA"), whereas the respondent No.3 is the Municipal Corporation of Greater Mumbai (for short "MCGM"), a body constituted under the provisions of the Mumbai Municipal Corporation Act, 1888. The fourth respondent is a builder and developer so also the fifth respondent and respondent No.6 is the proposed society.

5. It is common ground that the plot of land belongs to the Municipal Corporation along with other structure owners on the said plot. It admeasures 4501.3 square meters and there are only 57 of slum structures on the entire plot. Adjoining to this plot of land belonging to Respondent No. 3 is another plot bearing CTS No.558/A-1, 558/A-2 owned and possessed by respondent No. 4.

6. Some of the petitioners have formed a proposed society being respondent No.6. They claim to have challenged several actions and what is claimed is that orders have been passed therein. The petitioners claim that an Architect M/s. R.W. Gudal and Associates submitted a proposal on behalf of respondent No.6 on 4th September, 1992, under the Old Slum Redevelopment Scheme for the Municipal land. Once the Slum Rehabilitation Authority was established, that old scheme was required to be converted in a Slum Rehabilitation Scheme as per clause 10 of Appendix-IV of Regulation 33(10) of the Development Control Regulations, 1991. The said requirement of conversion was not complied with by the Architect and that is why the proposal submitted in the year 1992 was not processed further. It appears that the fourth respondent through their Architect submitted a Slum Rehabilitation Scheme in the name of Nevatia Compound Cooperative Housing Society for development on the private land owned by respondent No.4 and the land belonging to respondent No.3-Corporation on the basis of the consent of seventy per cent of the occupants. However, a No Objection Certificate has not been granted or issued by the Municipal Corporation for including its plot of land in this scheme. The proposal, therefore, was defective and should have been rejected at the threshold. However, the second respondent ? Slum Rehabilitation Authority obliged the respondent No.4 and granted an LOI for a plot admeasuring 2934.22 square meters and this LOI was valid only for a period of three months from the date of issue or till the IOA or CC for the rehab building is obtained or whichever is earlier. The same was not obtained within a period of three months and hence this LOI, copy of which is at Annexure-B of the paper-book, lapsed.

7. Respondent No.6 submitted their scheme through respondent No.5 and the respondent No.2, calling for a No Objection Certificate (for short "NOC") and Annexure-2 from respondent No.3. That was duly obtained on 15th June, 2001 in respect of the land owned by respondent No.3 in favour of respondent No.6. Annexure-C is a copy of the document issued by respondent No.3 in favour of respondent No.6.

8. Respondent No.2 has issued letters dated 23rd April, 2001 and 26th June, 2001, calling upon the respondent No.4 to submit NOC from respondent No.3 or else their proposal will not be processed further and merely kept on record.

Despite such an opportunity being given to respondent No.4, it failed to submit this NOC. The respondent No.3, by its letter dated 21st July, 2001 (Annexure-D) informed respondent No.2 that in view of the absence of consent of seventy per cent of the slum dwellers residing on the plot of land owned by respondent No.3, no scheme can be sanctioned in favour of respondent No.4. The respondent No.6 challenged the scheme of respondent No.4 as the same was without consent and not supported by General Body Resolution of the respondent No.6 in respect of the land belonging to respondent No.3. Thereupon, respondent No.6 filed a writ petition being Writ Petition No. 46 of 2002 before this Court in respect of two different schemes. In the said writ petition, an order dated 1st April, 2002, was passed directing maintenance of status quo in respect of the land belonging to respondent No.3. Annexure-E is a copy of this order dated 1st April, 2002. This writ petition was finally disposed of by an order dated 8th February, 2008, granting liberty to respondent No.6 to approach the High Power Committee in respect of its grievance (Annexure- F). That is how respondent No.6 filed an application (being Appeal No.65 of 2008) before the High Power Committee. That was disposed of by the Committee on 21st March, 2009. Copy of this order is at Annexure-G to the petition.

9. Aggrieved and dissatisfied by this order of the High Power Committee the respondent No.6 filed a writ petition in this Court being Writ Petition No.991 of 2009. By its order dated 22nd January, 2010, this writ petition was disposed of. Annexure-H is a copy of the order dated 22nd January, 2010. The respondent No.2 by its letter dated 23rd March, 2010, informed respondent No.4 that the letter of intent already granted on 1st August, 2000, has expired on 30th November, 2000 and, therefore, called for an explanation on that aspect of the matter. The copy of this letter is at Annexure-I to the petition. It is claimed by the petitioners that the respondent No.4 did not give a specific, but evasive reply by its reply dated 29th March, 2010. The Engineering Department of respondent No.2 on 4th October, 2010, has opined that it is not advisable to revalidate the LOI dated 1st August, 2000 and called for a fresh NOC from the land owning authority. In the meanwhile, the members of respondent No.6 passed a General Body Resolution in a meeting held on 9th December, 2010 and appointed respondent No.5 as a developer. This was done in the presence of a representative of the respondent No.2 ? SRA. The SRA prepared a report of this meeting and confirmed the appointment of respondent No.5 as a developer. Annexure-L is a copy of the report dated 9th December, 2010, in this behalf. The respondent No.2 on the basis of the opinion of its Legal Advisor passed necessary orders in the file and which were duly approved by the Chief Executive Officer of SRA on 28th March, 2011. Annexure-M is a copy of the order. This order was duly communicated to the respondent No.4. On the same day, respondent No.2 called upon respondent No.6 to submit a fresh slum rehabilitation scheme on the plot belonging to respondent No.3. (Copy of this letter is Annexure-O to the Writ Petition). The respondent No.6 through its Architect submitted a scheme on 23rd April, 2011. It also paid the scrutiny fee on 28th June, 2011. Then the

respondent No.4 issued a letter to the Ward Office of respondent No.3 calling upon the respondent No.3 to maintain the no objection for developing the Corporation land by respondent No.4 or to grant fresh NOC. Annexures P, Q and R are copies of the above documents.

10. The respondent No.4 challenged the order of the Chief Executive Officer, SRA dated 28th March, 2011/15th April, 2011 before the High Power Committee. The High Power Committee set aside this order and the High Power Committee's order is dated 31st March, 2012. The High Power Committee remanded the matter to the CEO of respondent No.2. Annexure-S is a copy of the order dated 31st March, 2012.

11. In view of this remand, the Chief Executive Officer passed an order on 7th June, 2012, inter-alia, reviving the proposal submitted by respondent No.4 and refusing to process the proposal submitted by respondent Nos.5 and 6.

12. However, the High Power Committee's order to the above effect was challenged by respondent No.6 by way of a writ petition in this Court being Writ Petition No. No.1947 of 2012. That writ petition was dismissed on 18th September, 2012. A copy of this order is Annexure-U to the petition. During the pendency of the aforesaid writ petition, the second respondent issued a letter of intent dated 14th August, 2012, reviving the earlier LOI dated 1st August, 2000. This LOI was in favour of respondent No.4. The revised LOI is for a plot of land admeasuring 6059.10 square metres, whereas the earlier LOI was only with regard to 3924.22 square meters. The revised LOI specified certain terms and conditions which need to be fulfilled before granting further permissions. The petition reproduces these relevant clauses as also annexes a copy of this LOI dated 14th August, 2012 (Annexure-V).

13. Thereafter, the second respondent issued a IOA on 12th November, 2012, in respect of the rehab building No.1. Annexure-W is a copy of the Intimation of Approval. The Architect of respondent No.4 has requested to grant plinth Commencement Certificate (for short "CC") to the rehab building No.1. Annexure-X is the copy of the application for grant of plinth CC. The same was duly approved by respondent No.2 on 26th November, 2012. It is complained that this was done by relaxing the terms and conditions of the revived LOI dated 14th August, 2012. A Commencement Certificate was also issued immediately thereafter on 29th November, 2012 (Annexure-Y). The complaint is that this Commencement Certificate was issued without compliance with the IOA condition No.8. The petitioners then make a grievance that though the respondent No.3 intimated to the CEO of the SRA?respondent No.2 by his letter dated 10th November, 2012, that the plot is reserved for primary school and the Municipal Corporation of Greater Mumbai is not interested in giving the plot for SRA development, no Annexure-II also is issued to respondent No.4 in respect of the said plot, still, the above actions were taken. The respondent No.3 was in continued correspondence requesting the respondent No.2's CEO to cancel immediately all the permissions in respect of the plot owned by respondent No.3.

That plot is more than 4501.3 square meters and there are only 50 to 60 eligible hutment dwellers on the plot. Annexure-AA is a copy of this letter dated 22nd November, 2012, which followed the prior letter dated 16th November, 2012 (Annexure-Z).

14. The petitioners complain that without this compliance of IOA condition No.8 the respondent No.4 started demolition of the structure on the MCGM plot. A complaint with regard to this demolition activity was made by the Ward Officer of respondent No.3 to the Colaba Police Station. The complaint was made in writing and on two occasions (by Annexure BB and Annexure- CC). In continuation of the earlier communication, the Corporation called upon the SRA by its letter dated 10th January, 2013, to immediately terminate the LOI, IOA and CC which are in contravention and contempt of the orders passed by this Court and defeating the rights of the land owning authority, namely, respondent No.3. Annexure-DD is a copy of this letter dated 10th January, 2013. Even the police authorities were of the prima facie view that the documents submitted by the respondent No.4 are forged. The petitioners have also filed individual affidavits stating that they refuse to grant any consent to respondent No.4.

15. In the above background and with all these complaints, no steps were taken against the respondent No.4 by the concerned statutory authorities that the present writ petition has been filed by the petitioners containing the above referred prayers.

16. There is another writ petition on our file and which is by the Municipal Corporation of Greater Mumbai. The prayer in that writ petition is to cancel the LOI dated 23rd April, 2001 and 14th August, 2012, intimation of approval dated 12th November, 2012 and the Commencement Certificate dated 29th November, 2012, issued by respondent No.2 in respect of the plot of land described in details in the writ petition.

17. The Municipal Corporation's petition only sets out identical dates and events, but mentions that the MCGM property is reserved for primary school and the petitioners do not want to give the same for SRA development. They even state that all the lapses and acts of omission and commission on the part of the authorities were brought to the notice of the Principal Secretary, Department of Housing, Government of Maharashtra on 7th January, 2013, who called for explanation from the CEO of the SRA. It was urged that the documents, based on which the SRA acted are fabricated, fraudulent and forged. The Municipal Commissioner's letter dated 20th March, 2013, highlights as to how the Municipal Corporation is in need of land for constructing a Municipal school. There are only 50 photo-pass holders who are eligible. The Municipal Corporation would request for their rehabilitation in alternate accommodations. It is not interested in giving its land to any developer and with the reservations. It has been emphasised by the Municipal Commissioner in his complaint to the Principal Secretary that the plot of land is reserved for Municipal primary school. The mandate of Article 21-A of the Constitution of India and The Right to Free &

Compulsory Education Act, 2009, is highlighted in the Municipal complaint.

18. Thus, the petitions have been filed in the above factual background.

19. The first writ petition is contested by the Slum Rehabilitation Authority. It has filed an affidavit of its Sub-Engineer. The SRA in the affidavit states that if all the dates and events are noted, the writ petition is barred by delay and laches. The LOI is dated 1st August, 2000. Merely because it was revalidated and issued on 14th August, 2012, does not mean that it can be challenged in a writ petition filed in the year 2013. Thus, there is a delay of about 12 years in filing the writ petition. It is also claimed that the writ petition filed by respondent No.5 has been dismissed by this Court on the ground that it suffers from delay and laches. Writ Petition No.1947 of 2012 is dismissed, inter-alia, holding that the recalling of the scheme of respondent No.4 sanctioned on 19th July, 2000, was erroneous and reinstatement thereof by the order of the CEO, SRA on 7th June, 2012, was upheld. The slum dwellers' petition who claimed to be members of respondent No.6, who has already lost two rounds of litigation in this Court, thus suffers from delay and laches.

20. Then, the SRA raises the issue of the petitioners' right to challenge the scheme. It is submitted that the petitioners are slum dwellers and on a land on which a scheme is implemented. They have no right in law, save and except to a permanent alternate accommodation as per the scheme in exchange of their original premises. The petitioners, therefore, being held eligible would be entitled to permanent alternate accommodation. They have no right to challenge the sanctioned scheme.

21. The issue next raised is that respondent No.4 are owners of a private land which is part and parcel of the scheme implemented by them. The scheme has their consent to the extent of their holding. In regard to that scheme, the Corporation has granted NOC on 29th July, 1994. They have granted NOC for implementation of the SRA scheme by their letter dated 21st August, 1997. The Corporation by not replying/objectioning to the implementation of the SRA scheme in response to the letter dated 20th September, 2000, there is a deemed NOC for the implementation of the SRA scheme on the land. Thus, the SRA has the NOC for implementation of the scheme on the land. It is submitted that the Municipal land is reserved for primary school. As per the sanctioned scheme, a school for 500 children will be constructed by the respondent No.4 on a plot area of 600 square meters as per Category III-A and a plot area of 1327.00 square meters is approved as vacant plot in front of the school. Further, the Municipal Corporation stands to gain by claiming an area admeasuring 799.21 square meters earmarked as proposed DP road. The area would be cleared, developed and handed over free of cost to the MCGM along with the road setback of 215 square meters. Thus, their DP road will be cleared, developed and open for the public. In the circumstances, the writ petition filed by the petitioners is motivated and really is a claim of the respondent No.5 which is highlighted by the petitioners. Thus, a rival developer has put up the petitioners after having lost his

substantive litigation. The writ petition, therefore, be dismissed. There is a further affidavit of 28th June, 2014, of the petitioners in which the breaches and serious acts of omission and commission on the part of the CEO of SRA have been highlighted. The respondent No.4 has filed an affidavit. In that affidavit, they have given detailed explanations with regard to the alleged fraudulent consents and the acts of the CEO, SRA. The writ petition is, therefore, said to be a belated and futile attempt to stall the scheme. The further affidavit of the petitioners is also faulted as being filed at the behest of respondent No.5 and in collusion with respondent No.6 who themselves have lost several legal battles. Therefore, it is claimed that the petition be rejected. Then, there is an additional affidavit of the petitioners filed on 24th March, 2015. In this, what the petitioners seek to place on record is the information in respect of an order passed under section 156(3) of the Code of Criminal Procedure, directing the police to investigate the matter as against accused, namely, Shantidevi Nevatia and officers of the SRA. This complaint has been filed by the Chief Promoter of respondent No.6 ? Sadashiv Damodar Nenekar and the copy of the same is Annexure-A. It is on that complaint that the Metropolitan Magistrate, 67th Court, Borivali, Mumbai, passed an order dated 15th November, 2014, directing the police to investigate the matter. The petitioners also rely upon some further documents and information collected under the Right to Information Act, 2005. Thus, the allegations of fraud and forgery are sought to be elaborated. Finally, reliance is placed on the FIR MECR 3/15 dated 19th February, 2015, registered by the Dindoshi Police Station against Smt. Shantidevi Nevatia, Ramji Shah, Vishwas Sitodia (Architect), Nirmal Kumar Deshmukh (present C.E.O., SRA), S.S. Zhende, the then C.E.O., SRA, Bhalchandra Thakre Secretary, SRA and V.V. Pawar, Deputy Chief Executive, SRA. It is in this backdrop that once again it is submitted that the writ petition be allowed.

22. In the second petition, the affidavits-in-reply are by the Partner of M/s. C.D. Nevatia Developers.

23. In this affidavit, it is submitted that the Municipal Corporation's petition suffers from gross delay and laches. This affidavit refers to the order dated 22nd January, 2010, passed by the Division Bench of this Court in Writ Petition No.991 of 2009 wherein this Court clarified that it is for the Corporation to take such steps in law to which they are entitled so as to protect their interest. The present petition is filed after expiry of three years and four months from the date of the Division Bench order. If the Corporation has done nothing for a period of three years and addressed a letter for the first time on 5th December, 2012, to the Senior Inspector of Police and thereafter two letters on 10th January, 2013 and 20th March, 2013, respectively to the Chief Executive Officer, Slum Rehabilitation Authority and to the Housing Secretary, still, this entire period of delay cannot be condoned. Alternatively and without prejudice it is submitted that the present petition of the Municipal Corporation is not bona fide. It has throughout consented to the slum rehabilitation scheme being implemented on the Municipal land and have been a party to the same. The lack of bona fides is apparent

because the Corporation does not object to the implementation of a scheme of this nature on its land. The respondent No.4 was appointed as a developer by respondent No.5 to this petition. As a land owning authority, the Municipal Corporation could have consented or refused to consent to the implementation of such a scheme on its land. However, once it gives such a consent, then, it is not open to the Municipal Corporation to select the developer. It is for the SRA to sanction the scheme to be implemented by the developer in conformity with law and guidelines laid down by this Court. This respondent submits that the petitioners had consented and positively upto 18th May, 2010, for implementation of the SRA scheme on its land. It is only when a decision was rendered by this Court on 18th September, 2012, in Writ Petition No.1947 of 2012, wherein this Court held that the fifth respondent to this petition had no right to implement a SRA scheme on the said land and the challenge raised by the fifth respondent to the scheme of the third respondent was not sustainable that the Municipal Corporation started addressing letters and making complaints.

24. Then it is stated that after the decision of the High Power Committee in the Application No.299 of 2011 the fifth respondent had filed Writ Petition No.1947 of 2012. That writ petition was decided by a judgment and order dated 19th September, 2012. The petitioners have deliberately and will-fully so also mala fide avoided to refer to this judgment and order in the present petition. The petitioners are aware of this order and they are also parties to the companion writ petitions filed by slum dwellers who are members of respondent No.5. The judgment of this Court in Writ Petition No.1947 of 2012 is annexed to that writ petition. In spite of that having been annexed, no reference is made to this judgment and rather it is concealed from this Court.

25. Then, it is submitted that for the reasons set out in paragraph 4 of this affidavit a writ petition by the Municipal Corporation is liable be dismissed.

26. It is only after the order passed in Writ Petition No. 1947 of 2012 that the Corporation has raised this dispute.

27. It is then claimed in paragraph 7 that in furtherance of the revalidation of the LOI on 14th August, 2012, the steps indicated in paragraph 7 have been initiated and completed. Thus, work commencement certificate is issued by SRA for construction of the rehab building. 19 slum dwellers have vacated their respective original premises and moved out and they are taking compensation in lieu of transit accommodation. Their rooms have been demolished. Annexure-III, namely, the financial strength certificate is submitted. It is in these circumstances and on additional reasons that are set out in the further paragraphs that it is submitted that the writ petition filed by the Municipal Corporation deserves to be dismissed.

28. We have a reply also of the SRA and in this reply, the SRA relies upon the Maharashtra Government Notification dated 26th March, 1998. It is stated that Annexure-II submitted by the Architect along with the proposal was forwarded to

the Additional Collector (Encroachments) for verification and certification as the same was partly in respect of the private land and partly in respect of the Municipal land. The Additional Collector being competent to certify the Annexure-II that his acts cannot be faulted. Further, on 26th September, 2000, the CEO, SRA addressed a letter to the Commissioner of the Municipal Corporation. He forwarded the copy of the LOI dated 1st August, 2000, and requested for NOC of the Corporation being the land owning authority. By that letter it was informed that if nothing is heard for a period of one month, it would be deemed that the Municipal Corporation's consent has been granted. Nothing was heard from the petitioners for a period of more than one month of the receipt of the letter. Therefore, as per the D.C. Regulation No.33(10) Appendix IV clause 2.8 the petitioners are deemed to have given their no objection for the scheme/LOI.

29. We have before us a rejoinder affidavit of the Municipal Corporation which firstly deals with the affidavit of C.D. Nevatia Builders who are developers and it is submitted that this developer is dragging the Corporation into a dispute between it and another developer. As far as the Municipal Corporation is concerned, it is neither concerned with respondent No.3 nor respondent No.4. In view of a decision taken by it to develop the MCGM plot for Municipal primary school as per D.C. Regulation on its own, the Corporation does not desire to have any slum rehabilitation scheme as far as its land and plot is concerned and it cannot be compelled in this manner.

30. Then, it is submitted that the Government Notification dated 26th March, 1998, does not indicate that the Corporation is denuded of its authority to develop its own land. It is the Commissioner of the Municipal Corporation of Brihanmumbai who is the competent authority in respect of the areas comprising of old lands in Brihanmumbai belonging to the Municipal Corporation. Reliance is placed upon a Circular No.28 dated 15th July, 1999. These are the averments and to be found at pages 366 and 367 of the paper-book in the affidavit-in-rejoinder of the petitioner.

31. We have another affidavit and which is filed by the respondent No.3 seeking possibly to sur-rejoin but it, in substance, reiterates the contents of the affidavit-in-reply of this respondent. Finally, we have an affidavit of the Controller (Encroachments/Removal) Greater Mumbai and which only deals with one aspect and namely the said Controller had power to certify Annexure II dated 3rd July, 1999, in respect of the lands involved in slum rehabilitation scheme which is subject matter of the petition. The said deponent would submit that the Municipal Corporation may be owning a land, but in terms of the Government Resolution and Government Notification dated 14th May, 1998 and 26th March, 1998 respectively, the Additional Collector (Encroachments) has jurisdiction to certify the eligibility of the slum dwellers for all the lands, including the lands owned by the MCGM. The Controller, therefore, justifies his act and annexes with his affidavit, the Government Resolution and Notification and several other documents which would evidence certification of Annexure II by him and that it

should not be faulted is his contention.

32. It is in the light of these materials that we have heard the learned counsel appearing for parties. Their contentions and submissions are consistent with the stand of these parties in the pleadings.

33. Mr. E.P. Bharucha, learned senior counsel appearing for the petitioners in Writ Petition No.147 of 2014, after taking us through the synopsis of the dates and events in the petition, invites our attention to page 168 of the paper-book. He would submit that the Brihanmumbai Municipal Corporation had discussed the proposal of M/s. Om Vishwashanti Cooperative Housing Society (Proposed) submitted on 27th July, 2011, together with Annexure-II for implementation of the SRA scheme on the land, more particularly described herein above. Further, it received a letter from the SRA dated 19th July, 2011, for issuance of Annexure-II (II) in the name of this Cooperative Housing Society. The land was reserved for Municipal Corporation Primary School and playground. On this land, Annexure-II had been previously issued also, three times by the Municipal Corporation and once by the Additional District Collector (Encroachments). That was in the name of different developer ? C.D. Nevatia. Then the full information has been given and it is stated that all these proposals, excluding paragraph/Circular -2 No.SRCUL/1/PN dated 15th June, 2001, are cancelled by the SRA. Thereafter, information was given and all the Circulars have been referred. Mr. Bharucha would submit that these proposals were placed by the Assistant Commissioner P-North Division before the Commissioner and if he is agreeable to the same (Points Capital A to D) the order will be conveyed to the appropriate authorities. Mr. Bharucha would submit that if section 33 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short "Slum Act") is perused, it is the Municipal Corporation which is the competent authority as it is the owner of the property. It is the competent authority for all purposes, including issuance of a letter of intent. The Slum Rehabilitation Authority had no jurisdiction to issue the letter of intent in respect of the property belonging to the Municipal Corporation. Now, the Municipal Corporation has decided to develop this property itself. It will rehabilitate all slum dwellers in the property. It is in these circumstances that Mr. Bharucha would submit that the writ petition filed by the Municipal Corporation be allowed.

34. Mr. Bharucha has submitted that the synopsis would disclose as to how the property was sought to be developed and in pursuance of a LOI dated 1st August, 2000. However, he would submit that the Municipal Corporation received a letter from the CEO, SRA dated 23rd April, 2001. The CEO called for clarification from the Deputy Collector (Encroachments) as to how the Additional Collector issued the Annexure II on the Municipal property and directed him to rectify the same. These facts were disclosed in this letter of 23rd April, 2001. Thereafter, the second respondent issued a letter dated 26th June, 2001, requesting the developer to submit the NOC from the petitioner for the development of Municipal school plot being under reservation within a period of

fifteen days. This letter clearly stated that if the requisite NOC is not submitted within the stipulated period, the office would proceed to record the proposal and close the file. Thereafter, the proposal submitted by another developer with Annexure-II issued by the Land Owing Authority will be proceeded further on its merits.

35. Mr. Bharucha relies upon this letter, copy of which is at Annexure-H dated 26th June, 2001. He also relies upon a letter dated 21st July, 2001, of the Corporation raising an objection for issuance of Annexure-II in respect of the Municipal property and further points out that the mandatory seventy per cent consent from the hutment dwellers by the said developer is not obtained.

36. This issue was raised by the proposed society, namely, respondent No.5 to writ petition No.147 of 2014 and that is how Mr. Bharucha would invite our attention to the orders passed in earlier petitions. Mr. Bharucha submits that the slum rehabilitation scheme of the said C.D. Nevatia Developers has not been processed further and in that regard, he relies upon the letter dated 15th April, 2011. It is in these circumstances the Corporation has already conveyed to the SRA its disinclination to implementation of the SRA scheme on its property admeasuring 4501.3 square meters only for fifty persons residing on the said land. It was proposed that these eligible persons would be provided with permanent alternate accommodation in the Corporation's Project Affected Persons Scheme. Thereafter the entire Municipal property would be utilised for the purpose of giving effect to the reservation, namely, primary school. Once the petitioners have not consented to the SRA scheme, still if the respondent No.3 Nevatia Developers place their scheme and seek a fresh NOC, that itself would mean that all earlier proposals lapsed. It is, not, therefore, permissible for these developers to revive an already dropped proposal or scheme.

37. In the circumstances, Annexure-II issued by the Additional Collector (Encroachments) and the revised LOI were objected to by the Corporation by their letter dated 16th November, 2012 ? Annexure-V. This was reiterated by the letter dated 22nd November, 2012. Thus, instead of cancelling all the permissions and approvals, the Slum Rehabilitation Authority went ahead and issued a Commencement Certificate to respondent No.3. The respondent Nos.2 and 3 started demolition of structures on MCGM property. That is how the intervention of the local police station was sought. Though some demolition activity was carried out, thereafter the intervention of the Principal Secretary of the Department of Housing, Government of Maharashtra was sought.

38. Mr. Bharucha would submit that a policy, as far as primary education is concerned, has been evolved by the Municipal Corporation for which it requires the subject plot. Its objections are clear and apparent. If these objections were clear and reiterated from time to time, then, the Corporation cannot be deprived of its right of dealing with its own property.

39. Mr. Bharucha's contentions have been opposed by Mr. P.K. Dhakephalkar,

learned senior counsel appearing for the SRA. Mr. Dhakephalkar would submit that the Municipal Corporation cannot raise the issue of competence of the Additional Collector to certify Annexure-II merely because a slum rehabilitation scheme is being implemented partly on Municipal property. Mr. Dhakephalkar would submit that it is the prerogative of the State Government and in terms of the Slum Act to take such measures and initiate such steps as are permissible therein so as to improve the condition of slums and slum dwellers. If it is not possible to take any measures it is permissible then to clear the plot and cause redevelopment thereof. In the process the State has decided to consider the plight of the slum dwellers. Therefore, such of the slum dwellers and who reside in structures which are falling in the notified slum rehabilitation area, then, their rehabilitation is permissible and provided for by the Slum Act. The broad object of the Act is to remove the slums. Slums are a source of nuisance and affects adversely public health. Mr. Dhakephalkar, therefore, submits that rehabilitation measures and packages are evolved and framed with the participation of the slum dwellers. This would ensure eradication and removal of the slums and it is alarming that in a city of Mumbai there are about twelve and a half lakh slums inhabiting fifty seven lakh of the population of Mumbai approximately. It is eventually their plight but for their benefit the structures and slums can be removed with the involvement of several public bodies and statutory authorities, then, merely because some slums are to be found on Municipal land, it cannot be held that while implementing comprehensive scheme of rehabilitation of slum dwellers on private land adjacent to Municipal property or land, the Municipal property or land cannot be included in such schemes. All that would be required is a NOC from the land owner. In this case, the land owner is the Municipal Corporation. Mr. Dhakephalkar would submit that because of this condition the Municipal Corporation is taking undue advantage. It is holding up the implementation of a properly framed and implemented slum rehabilitation scheme. It does not grant its NOC but sits on the file. By inaction of the Municipal Corporation, the entire slum rehabilitation scheme and object and purpose of the Act should not be defeated and frustrated. Rather, the provisions of that Act and Appendix-IV of the D.C. Regulation 33(1) should be read together and harmoniously. Such inaction, therefore, should be permitted to be taken as a deemed no objection. It is on that footing that the SRA has proceeded and together with other entities. Such a stand of the SRA is neither vitiated by any error law apparent on the face of the record or perversity warranting interference in writ jurisdiction. It is rather the conduct of another public body and statutory authority, namely, Municipal Corporation of Greater Mumbai which is preventing removal of encroachments and slums from Municipal lands. The Municipal lands being huge in number, this curious stand of the Municipal Corporation perpetuates unauthorized and illegal slums. Hence, the writ petition be dismissed.

40. Dr. Sathe, learned senior counsel appearing for the respondent No.4 in Writ Petition No.1667 of 2013 and for the respondent No.3 in Writ Petition No. 147 of 2014 - M/s. C.D. Nevatia Developers would submit that the Municipal

Corporation's stand should not be accepted at all. Their writ petition must be dismissed. Equally, the petitioners in Writ Petition No.1667 of 2013 are put up by another developer and his designs and motives should not succeed. Dr. Sathe would submit that the LOI in this case was issued on 1st August, 2000. It is renewed in the year 2012 for one year and stands renewed further. Dr. Sathe would submit that there is no construction on the Municipal property. The slum dwellers on private property of respondent No.3 are shifted from the proposed DP road. The Municipal Corporation is not cooperating even when Annexure-II was issued. The builder and developer who is implementing the scheme is ready and willing to lay out the road and construct it at its own cost. It will be handed over to the Municipal Corporation. The developer having expressed its readiness and willingness to develop that part of the property which is reserved for Municipal primary school and belonging to the Municipal Corporation free of cost would definitely and if permissible in law, derive benefits of such acts on its part. It would seek compensatory FSI and TDR. Dr. Sathe would submit that the Om Vishwashanti Cooperative Housing Society (Proposed) filed a writ petition being Writ Petition No. 46 of 2002 which was disposed of on 8th February, 2008, directing it to approach the HPC. The stay on the construction continued and eventually on 21st March, 2009, the HPC passed an order. Dr. Sathe would invite our attention to the stand of the Municipal Corporation and in the first instance when the Municipal Corporation stated that it does not require the land for any important project like reservoir, fire station, ward office, except for primary public school. Therefore, there is no objection to permit redevelopment of the plot under reference belonging to the MCGM. Dr. Sathe would submit that the Annexure-II is at page 110 to 117 of the paper-book in Writ Petition No.147 of 2014. It is to the knowledge of the Municipal Corporation that this Annexure-II has been prepared and certified on 3rd July, 1999. Dr. Sathe would submit that at page 256 of the paper-book there is a third Annexure-II dated 15th June, 2001. He would then invite our attention to page 320 of the paper-book which is but an annexure to the affidavit of Smt. Shantidevi Nevatia. He would submit that this document, if perused, would reveal that there were communications from the Municipal Corporation itself and on the application made by Om Vishwashanti Cooperative Housing Society (Proposed) dated 12th May, 2010, under the Right to Information Act, 2005. The information was provided by none other than the Municipal Corporation itself. This refers to the third NOC. Dr. Sathe would then submit that the plans were approved by the SRA and that document would be found at page 353 and 355 of the paper-book. Relying upon the affidavit filed by Smt. Shantidevi Nevatia, Dr. Sathe would submit that till 2014, the Municipal Corporation has never taken a stand that it will develop the immovable property. It did not oppose the grant of NOC. Rather, it granted respondent No.4 the NOC.

41. Dr. Sathe would then rely upon the fact that the Municipal Corporation was a party-respondent to Writ Petition No.991 of 2009. He would submit that pages 154 and 157 of the paper-book would reveal that the Corporation has not availed

of the liberty granted by this Court. Dr. Sathe submits that the proposed Housing Society Om Vishwashanti filed a writ petition in this Court. It had contended that it forwarded a proposal to SRA for carrying out development of the plot. That application was considered, but as no steps were taken, the SRA decided to drop it or not to process it. Thereafter, the Division Bench deciding writ petition no. 991 of 2009 refers to the earlier Writ Petition No. 46 of 2002 and observe that the petitioners' proposed Society were aware that a scheme has been sanctioned and they are bound in law to challenge it, but it did not challenge it and raised an issue that the matter was pending before the High Power Committee. That is no answer. The proposed society should have challenged the sanctioning of the scheme in favour of the respondent No.6 to that writ petition. Then Dr. Sathe submits that the challenge of Om Vishwashanti thus failed. It is now propping up the Municipal Corporation so that it refuses to participate in the slum rehabilitation scheme. Once the issue as to whether SRA Scheme could be sanctioned in respect of the land belonging to the Corporation was kept open in that writ petition and the Corporation was granted liberty to raise it, that issue having not been raised, now the Corporation is estopped and for that purpose Dr. Sathe would rely upon the fact that on 12th January, 2011, the LOI in favour of respondent No.3 was cancelled but it approached the HPC. The HPC passed an order on 31st March, 2012. In pursuance thereof, on 7th June, 2012, the CEO of SRA has passed a fresh order. The respondent Nos.5 and 6 purported to challenge that by filing a writ petition in this Court on 18th September, 2012. There again, the Municipal Corporation was a party. Reliance is placed upon page 311 of the paper-book in that behalf. Dr. Sathe then invites our attention to the stand of the Municipal Corporation in Writ Petition No. 46 of 2002 and in that regard refers to pages 534 and 539 of the paper-book. He also refers to pages 524 and 525 to submit that the regime of the Slum Act is not brought in as far as the Appendix-IV of Regulation 33(10). Therefore, from 1999, if the project is going on, then, ten years down the line the Municipal Corporation cannot raise the issue of want of NOC or want of approval. This is not an Annexure-II for the benefit of respondent Nos.5 and 6. Once respondent No.3 Nevatia Developers is taking all the responsibility and will not leave out or exclude eligible occupants and slum dwellers from the scheme, then, the writ petition of the Municipal Corporation should be dismissed. Equally the State petition should also be dismissed.

42. As far as the other petition is concerned, Mr. Mihir Desai, learned senior counsel submits that the correspondence would reveal as to how the Municipal Corporation of Greater Mumbai has been writing to the SRA and objecting to the scheme. The Municipal Corporation of Greater Mumbai, therefore, has rightly taken up the issue and in larger public interest. The writ petition of the Municipal Corporation of Greater Mumbai must be, therefore, allowed. Mr. Desai thus, in substance, supports the Municipal Corporation of Greater Mumbai's writ petition and objects to the scheme of M/s. C. D. Nevatia Developers. The slum dwellers, eligible and covered by the Annexure ? II should be rehabilitated is his emphasis.

43. With the assistance of the learned senior counsel appearing for parties, we have perused the writ petitions, their annexures and the voluminous compilations. We have also perused some of the documents, including a recent Resolution/decision of the Municipal Corporation, Minutes of which were tendered by Mr. Dhakephalkar and Dr. Sathe. We have also perused the relevant statutory provisions.

44. We are of the opinion that the fate of the Municipal Corporation of Greater Mumbai's Writ Petition No. 147 of 2014 would clinch the issue.

45. As far as the petition of the Municipal Corporation is concerned, none disputes it is the owner of the property described more particularly at Annexure-A to the petition. Further, none is disputing the reservation on the subject property of a primary school.

46. The petitioner-Corporation points out that one Smt. C.D. Nevatia was the original owner of the property. The subject property was acquired by the Corporation in or about 29th September, 1982 and the Property Card reflects the name of the petitioner. The claim of the petitioner Mumbai Municipal Corporation is that in or about 2nd October, 1997, it issued Annexure-II in respect of the said property along with adjacent land for the purpose of development on the proposal of the proposed Cooperative Housing Society (Om Vishwashanti). The same was challenged by the Corporation, but prior thereto it is stated that the CEO of the SRA expressed surprise about issuance of such Annexure-II with regard to the Municipal property. The petitioner-Corporation relies upon a letter addressed by the Executive Engineer, SRA to the Assistant Municipal Commissioner, P/North Ward dated 23rd April, 2001, copy of which is at page 140 of the paper-book. That letter reads as under :

" Slum Rehabilitation Authority

No.SRA/Eng/443/PN/P&R/LOI

5th Floor, Griha Nirman Bhavan,

Bandra (E), Mumbai ? 400 051

Date: 23 APR 2001

To,

Assistant Municipal Commissioner P/North Ward,

Mumbai 400 001

Sub: Proposed SR Scheme on plot bearing CTS No.558A/1 558A/2 & 558/B village Malad at Nevatia Road, Malad(E)

Ref: No.SRA/Eng/443/PN/PR/LOI dated 26.9.2000

Sir,

This office was in receipt of a SR Scheme proposed from Architect Shri R.W. Gudal on the plot bearing CTS No.558/B of village Malad in favour of Vishwa Shanti CHS Soc. (Prop). The land under CTS No.558/B is under reservation of Municipal Primary school and is required by MCGM in past from its owner Smt. C. D. Nevatia and other.

The Annexure-II for this plot was also issued by the then W.O. P/North on 2.10.1997 and remarks from Education Officer giving their requirement for the school was also received. The proposal under reference was not pursued by the Architect/society. Thereafter the proposal on the school plot was closed and recorded due to non compliance from Architect meanwhile this office received another proposal from Architect Shri L.D. Babladi on behalf of the developer Smt. C.D. Nevatia & others on the land bearing CTS No.558A/1, 558A/2 & 558/B Architect has obtained Annexure II dated 3.7.98 for the all the three above said plots including Municipal School plot, the proposal was approved by this office as per SR Scheme prevailing policy keeping provision for municipal Primary School and LOI was issued to the Architect/Developer under intimation of then Ward Officer P/North.

Subsequent to this approval, the slum dwellers on Municipal School plot under the banner of some different developer have approached this office for approval of SR Scheme on Municipal reservation plot i.e. CTS No. 558/B. On representation from the complaint, regular the matter was put up to Secretary (SRA/CEO(SRA)) where it is opined to obtain separate Annexure II for Municipal and private land.

In view of the above you are requested to issue Annexure II for Municipal land along with NOC for the development of Municipal reserved plot.

Yours faithfully

Sd/-

Sd/-

Sd/-

23/4/01

23/4/01

23/4/01

S.E.(S.R.A.)

A.E.(S.R.A.)

Executive Engineer (SRA)"

47. According to this letter, it is apparent that the Executive Engineer and the SRA maintained that a separate Annexure-II would have to be prepared for the

Municipal and private land. That is how the Assistant Municipal Commissioner was requested to issue the same.

48. On 23rd April, 2001 itself, the SRA addressed a letter to the Collector (Encroachments), Old Custom House, Mumbai and the same reads as under :

Slum Rehabilitation Authority

No.SRA/Eng/443/PN/ML/LOI

5th Floor, Griha Nirman Bhavan,

Bandra (E), Mumbai ? 400 051

Date: 23 APR 2001

To,

Additional Collector (ENC)

Old Custom House,

Mumbai 400 001

Sub: Proposed SR Scheme on plot bearing CTS No.558A/1 558A/2 & 558/B village Malad at Nevatia Road, Malad(E)

Ref: 1) Annexure-II issued by Dy Collector (ENC) under No.UD-4/Desh-13C/22(10)/SR dated 3.7.99 .147/99

2) This office earlier letter u/No.SRA/ENG/10458 dated 9.10.2000.

Sir,

This office has approved SR Scheme on above referred plot of village Malad at Nevatia Road, Malad (E) based on the Annexure-II forwarded by you under

No.UD-4/Desh-13C/33(1))/SR/147/99 dated 3.7.99 it may be mentioned here that the plot under reference comprises of D.P. Road land, Municipal Primary School reservation plot and other Slum plots.

The plot bearing C.T.S. 558/B is under Municipal School reservation and the same has been acquired by MCGM in past from the present Developer Mrs. C.D. Nevatia & Others Prior to receipt of the Annexure-II from your office, in past, this office is also in receipt of Annexure-II issued by Ward Officer P/North for the slum on the Municipal school plot.

Subsequent to the approval of the SR Scheme, the slum dwellers on Municipal school plot under the banner of some different Developer have approached this office for approval of SR Scheme on the Municipal reservation plot i.e. CTS No.558/B.

On representation from this complaint/request the matter was heard by Secretary SRA and an independent report submitted in CEO(SRA), Secretary

(SRA) has expressed his surprise to the Annexure-II issued by Additional Collector (ENC) for the slum on the Municipal plot for which Ward officer P/N is designated Competent Authority to issuing Annexure-II.

The CEO (SRA) has directed to obtain report/clarification Additional Collector (ENC) AS TO HOW additional Collector has issued Annexure-II on Municipal land and rectify the same immediately.

In view of the above you are requested to clarify the same immediately.

Yours faithfully

Sd/-

Sd/-

Sd/-

23/4/01

23/4/01

23/4/01

S.E.(S.R.A.)

A.E.(S.R.A.)

Executive Engineer (SRA)-III"

49. Thus, it is apparent that the SRA was of the view that Annexure-II for Municipal land will have to be prepared by the competent authority, namely, the Assistant Municipal Commissioner. No Annexure-II could have been prepared and issued by the Deputy Collector is the stand taken. That is how even C.D. Nevatia was informed by the SRA by the letter at page 144 Annexure-H to the petition dated 26th July, 2001. A meeting was held with the CEO, SRA on 25th June, 2001, and it was decided that Smt. Nevatia should submit a NOC from the Municipal Corporation for the development of the Municipal school plot being under reservation within 15 days from the date thereof. It was clarified that if this NOC is not submitted within the stipulated period, the SRA will proceed to record and close the SRA scheme and the proposal submitted by another developer with Annexure-II issued by the land owning authority, namely, the Municipal Corporation of Greater Mumbai will be processed further on its merits.

50. On 21st July, 2001, Annexure-I at page 145 of the paper-book, the Assistant Commissioner, P/North Ward replied with reference to the LOI of the proposed slum rehabilitation scheme on the subject property that at the joint meeting held on 6th July, 2001, the issue was further discussed and it was observed that important aspect of consent of hutment dwellers situated on the plot is a primary condition for issuance of NOC/Annexure-II and which M/s. Nevatia Developers did not fulfil. It was also reported that till the letter dated 15th July, 2001, the

office of the Assistant Commissioner was in dark about M/s. Nevatia Developers" proposal for development. No communication was received on this proposal either from SRA or from M/s. Nevatia Developers till now. Without consent of the seventy per cent members of the hutment dwellers, a scheme cannot be issued with NOC or Annexure-II.

51. Then, what we have is an order passed by this Court in Writ Petition No.46 of 2002. That was a petition filed by Om Vishwashanti Cooperative Housing Society Limited & 3 Ors. v. The Chief Executive Officer, S.R.A. & 3 Ors. That order, copy of which is at page 146 and 147 of the paper-book reads as under:

" It is admitted by the learned counsel for respondent no.5 as well as learned counsel for respondent nos.1 and 2 that in so far as the land bearing CTS no. 558/B and 558/B 1 to 40 situate at village Malad (East) owned by Bombay Municipal Corporation is concerned, upon which redevelopment is proposed by respondent no.5, Annexure II has not been issued by the concerned authority of Bombay Municipal Corporation. However, according to respondent no.5, as it intends to develop the land comprising of CTS no. 558/B and 558/B 1 to 40 owned by the Bombay Municipal Corporation and so also adjoining land owned by private persons, the Competent Authority to issue Annexure II is Additional Collector (Encroachment) and the said Authority has already issued Annexure II to respondent no.5.

2. It requires elaborate consideration by this Court whether for the redevelopment of the land owned by the Bombay Municipal Corporation, without issuance of Annexure II by the concerned authority of Bombay Municipal Corporation, respondent no.5 can be permitted to redevelop the said land or not.

3. Hence Rule.

4. Mr. S.G. Surana, Advocate waives service for respondents 1 and 2, Mr. M.B. Rao, Advocate waives service for respondents 3 and 4, Mr. Pandey, Advocate waives service for respondent no.5 and Mr. Pradeep Jadhav, Advocate waives service for respondent no.6.

5. Hearing expedited in the month of October 2002.

6. Rule on stay, returnable forthwith.

7. During the pendency of writ petition, the parties are directed to maintain status quo in respect of development of land in question i.e. CTS no. 558/B and 558/B 1 to 40, village Malad (East), Bombay. However, respondent no.5 shall be free to develop the land in accordance with law other than the land afore-stated owned by Bombay Municipal Corporation."

52. This petition was admitted and this Court directed parties to maintain status quo in respect of the development of the land in question. It was clarified that the developers can develop the land which was private and leaving out the Municipal land from its project. We have reproduced this order and particularly

emphasised paragraphs 2 and 7 thereof in order to appreciate Dr. Sathe's and Mr. Dhakephalkar's arguments about deemed NOC and to which we shall advert a little later.

53. This writ petition was disposed of on 8th February, 2008, in the light of the Full Bench judgment of this Court thereby relegating parties to the remedy of approaching the High Power Committee. Thereafter, the HPC was approached and the HPC in its order passed on 21st March, 2009, noted the objection of Om Vishwashanti CHS with regard to the claim made by the developers M/s. Nevatia Developers that they had an Annexure-II in their favour in relation to both lands, namely, the private land and the MCGM land. This could not have been the position according to Om Vishwashanti CHS. After the list of occupants was submitted to the Assistant Municipal Commissioner and the authority, in turn, had granted Annexure-II and NOC to permit redevelopment of the land belonging to MCGM. Though this application was dismissed, we do not find any discussion therein. Then comes Writ Petition No.991 of 2009 which was decided by this Court on 22nd January, 2010. That challenged the order of the HPC. That order, to the extent relevant, reads as under :

"The present petition by the Petitioners seek to challenge the said scheme on various grounds as also the order dated 21.3.2009.

The question before us is whether we could in these circumstances entertain the present writ petition. On behalf of the Petitioner the learned counsel stated that the scheme could not have been sanctioned as the land belongs to the Corporation and apart from that there are various violations of statutory provisions.

It is also sought to be pointed out that filing of the Petitioner's application was not communicated to the Architect and in these circumstances, the Petitioners were not aware of the same.

Respondent No. 6, the present developer has filed an affidavit on 19.8.2009 with which he has annexed the copy of the reply filed by the S.R.A. in Writ Petition No. 46 of 2002. That affidavit was affirmed on 4.2.2002. That affidavit contains various annexures which will also show the correspondence exchanged by the S.R.A. with the Architects of the Petitioners as also the letter dated 1.8.2000. which shows that the scheme submitted by Respondent No. 6 has been approved.

In our opinion, once the Petitioners were aware that the scheme has been sanctioned, the Petitioners were bound in law to challenge the sanction of scheme in favour of Respondent No. 6. Merely contending that issue was before the high power committee in our opinion is no answer. In the earlier Writ Petition No. 46 of 2000, the petitioners had not challenged the sanctioning of the scheme in favour of the Respondent No. 6, though the reply filed by S.R.A. Clearly disclosed that fact.

Even if we accept the contention on behalf of the Petitioners that their Architects

were not intimidated about the filing of application, at least in the year 2002 they became aware of the same. In spite of that no steps were taken to challenge the scheme sanctioned in favour of Respondent No. 6. The issue as to whether the S.R.A. could have been sanctioned in respect of the land belonging to the Corporation need not be gone into. It is for the Corporation to take such steps in law to which they are entitled to protect their interest. Disposal of the Petition will not stand in the way of the Corporation protecting its legitimate rights. Considering the above, in our opinion, the challenge to the scheme in favour of Respondent No. 6 is belated and hit by laches. In the light of that, we are not inclined to interfere in exercise of our extra ordinary jurisdiction. Hence, Petition rejected."

54. It is in these circumstances that we are unable to accept the arguments of Dr. Sathe and Mr. Dhakephalkar that the Corporation has acquiesced or has granted a consent for development on its own land on the basis of the approvals and permissions obtained by M/s. Nevatia Developers.

55. In fact, on 23rd March, 2010, the SRA issued notice to Smt. C.D. Nevatia and others which conveys a clear intent to invoke section 13(2) of the Slum Act. On 15th April, 2011, the developers were informed by the SRA that their proposal or scheme of rehabilitation on both plots shall not be processed further and only stands recorded. Then, on 19th July, 2011, the SRA addressed a letter to the Assistant Municipal Commissioner P/North Ward forwarding along with the same, the relevant documents, including a proposal received for sanction and approving a SRA scheme on the plot. The Assistant Municipal Commissioner was requested to send a list of the existing of the structures, including religious structures, schools etc. and whether any one of them can be said to be eligible reckoning the cut off date as 1st January, 1995. This letter was immediately replied on 14th September, 2011 in which the Municipal Corporation informed that the subject plot has a reservation of Municipal primary school and playground. It was also informed that a proposal from M/s. Om Vishwashanti Cooperative Housing Society (Proposed) requesting approval to the Annexure-II has been received on 27th July, 2011. It was emphasised that with regard to this plot, on three occasions earlier, Annexure-II was prepared and approved by the Assistant Municipal Commissioner, P/North Ward. On one occasion, another Annexure-II was prepared by the Additional Collector (Encroachment/Removal) in the name of the builder and developer M/s. C.D. Nevatia Developers. However, the proposal of the developer has been rejected and we are of the opinion that from this communication of the Corporation, copy of which is at page 166 Annexure-Q, it was not the intent of the Corporation at any time to approve the other schemes in relation to Municipal plot. Rather, the Municipal Corporation decided that its land admeasuring 4501.3 square meters should not be given to the hutment dwellers for SRA scheme. The list of eligible slum dwellers on this land should be prepared and they should be transferred/relocated to Municipal Corporation Project Affected Persons Building. After the land is cleared and a compound wall is erected across it, the Education Officer should take over the

same for proposed reservation. It is these proposals which have been approved.

56. At Annexure-R page 174 of the paper-book is a copy of the letter dated 7th October, 2011, from Shantidevi Nevatia and others to the Ward Officer, P/North Ward of the Municipal Corporation. The said letter reads as under :

"7th October 2011

From: Shantidevi Nevatia & Ors.

Navetia House, Kishanlal Nevatia Road,

Malad (East), Mumbai ? 400 097.

To,

The Ward Officer, P/North Ward

Respected Sir,

Ref: Proposed SR Scheme on plot bearing CTS No. 558A-1 558A-2 and 558B of Village Malad, Taluka Borivali of Nevatia Compound, Kishanlal Nevatia Road, Malad (East), Mumbai.

Sub: Request to maintain the no objection given to us/to give fresh NOC for developing the above referred scheme which includes land acquired by MCGM (CTS No.558 B) to keep the scheme safeguarded from the rival developers who are trying to highjack the project by misrepresenting some of SRA Officers.

We had submitted Scheme for the development o the plot of land bearing CTS No. 558A-1, 558A-2 which is owned by us and 558B which was owned by us and is acquired by MCGM (New CTS No.558A/1A(Part), 558A/1A/1 to 25, 558A/1C, 558A/1C/1 to 24, 558B/1 to 40) of Village Malad, Nevatia Compound, Kishanlal Nevatia Road, Malad (East), Mumbai, under SRA Scheme vide No.SRA/ENG/443/PN/PL/LO, which was duly approved and sanctioned and letter of intent in respect whereof is issued to us.

The SRA has sanctioned the scheme as there being no objection raised by you, who is the land owing authority in respect of the CTS No.558 B and the same is termed as your deemed NOC for developing the land.

The MCGM land is originally owned by us and is acquired by the MCGM for the Public Purpose construction of Municipal School. The land owned by MCGM is now encroached by the slum dwellers and is surrounded by land owned by us. D.P. Road is also passing through the land owned by us. We shall be developing the MCGM land along with the land owned by us by implementing the consolidated scheme which would be an ideal scheme whereby slum on MCGM land and land owned by us can be cleared, Reservation can be built up on and D.P. Road will be constructed which passes through the land owned by us.

We had through a long struggle won the legal battle against the rival society

through their developers taking the Detour path by misrepresenting and managing SRA Authorities to grab the scheme which on the land owned by us. Even the Hon"ble High Court has dismissed the Writ filed by the rival Society by its order dated 22.01.2010 passed in the Writ Petition No.991 of 2009, a copy of the same is enclosed herewith for your perusal.

We have the support of more than 70% of Slum Dwellers as the same is undisputed fact in the light of the grant of LOI in our favour by SRA and we have also obtained the fresh agreements and consents as there being revision of the area to be allotted to the slum dwellers from 225 sq. ft. to 269 sq. ft.

We hereby request you to maintain your No Objection for developing the MCGM land by us by implementation of Slum Rehabilitation Scheme and/or to grant fresh NOC in our favour.

Please do the needful and oblige.

Thanking you

Yours Truly,

Sd/-

Shantidevi Nevatia and Ors.,

Through their Constituted Attorney

Mr. Ramji H. Shah."

57. A bare reading of this letter would indicate as to how the developer understood that a no objection would have to be granted or maintained for developing the MCGM land for implementation of the slum rehabilitation scheme and there is nothing like a deemed consent. Rather, this letter requests grant of a fresh NOC in favour of Shantidevi Nevatia and others. We do not find that in the teeth of this, the revised LOI, copy of which is at page 176 of the paper-book can carry the case of these developers or the SRA any further. The terms and conditions thereof have been relied upon by Dr. Sathe, but those terms and conditions and particularly condition No.15 do not, in any manner, indicate that the petitioner-Corporation has granted any consent, much less any deemed one can be inferred from it. Rather, in the salient features of the scheme set out at page 179, the LOI indicates the area of slum plot as 6059.10 square meters and it deducts the approved FSI in Building Proposal Department of MCGM dated 7th February, 2010 and a P.G. Reservation etc. Thus, it is apparent that the SRA was aware that without the concurrence and approval of the Municipal Corporation no scheme can be implemented qua its plot. From page 180 of the paper-book, it is apparent from condition No.21 that M/s. C.D. Nevatia Developers were called upon by the Deputy Chief Engineer, SRA and the Executive Engineer and Superintending Engineer to obtain NOC before requesting for approval of plans or at the stage at which it is insisted upon by the concerned Executive Engineer, SRA from the P/North Ward of the Municipal Corporation. It is clear, therefore,

that no question or any deemed consent arises and the SRA or the developer cannot rely upon the alleged inaction of the Corporation in that behalf. Whatever may be the fate of the scheme proposed by Nevatia Developers, once on account of the order passed by this Court in Writ Petition No.46 of 2002 and the specific clarification given in the latter order passed on 22nd January, 2010 in Writ Petition No.991 of 2009, the SRA and the private parties could not have proceeded on any implied consent or deemed NOC from the Municipal Corporation.

58. This aspect becomes clear if one peruses Annexure-AA which is a copy of the letter of the MCGM dated 10th January, 2013, to the CEO of SRA. After recording all the above facts and circumstances, the Deputy Municipal Commissioner, Zone-IV terms the letter from CEO, SRA dated 24th December, 2012, as containing distorted facts and resorting to fraudulent documents. The LOI and IOA and the CC have all been questioned and it was requested that the same be terminated. No law gives SRA the authority to develop a property styled as Municipal land without grant of Annexure-II from the competent authority, namely, the Assistant Commissioner, P/North Ward of and NOC from the land owning authority, namely, the Municipal Corporation of Greater Mumbai. The Municipal Corporation evinces its clear intent to start developing its own plot.

59. If there was ever any doubt about the above that stands completely cleared by the letter addressed by none other than the Municipal Commissioner himself on 20th March, 2013, to the Principal Secretary (Housing), Government of Maharashtra. That letter raises serious objections with regard to the role of SRA and the acts attributed to it. The letter specifically requests for a direction to cancel all the permissions and approvals so far as they relate to the Municipal land and granted by the SRA. Therefore, it would not be proper to accept the contentions of the learned counsel appearing for the respondents and contesting the petition that the Municipal Corporation had approved their acts. Once they have to rely upon and raise a plea of deemed consent, then, it goes without saying that neither there is any Annexure-II which is sanctioned in relation to the Municipal land favouring the developer nor there is any NOC from the Municipal Corporation. The Municipal letter dated 21st October, 1997, which is relied upon will not take the case any further inasmuch as on the own showing of the respondent No.3, a LOI was issued. That was relying upon nothing, but a deemed consent. The petitioner-Corporation allegedly not objecting to the implementation of the scheme their deemed consent is what is pleaded by the respondent No.3 at page 238. For the reasons that we have set out and once the aspect of Municipal Corporation's NOC was clearly kept open by this Court as well in its order passed on 22nd January, 2010, in Writ Petition No.991 of 2009, then all the more we cannot and based on the affidavit-in-reply filed by respondent No.3 uphold the contentions of both Dr. Sathe and Mr. Dhakephalkar.

60. It has been clarified by the petitioners in their rejoinder affidavit as to how the plot of land in its entirety is reserved for Municipal primary school. It desires

to develop it and bearing in mind the object and purpose of the RTE Act. Reliance is rightly placed in this affidavit on the order passed by this Court in Writ Petition No.991 of 2009. Once the consent or No Objection Certificate from the land owning authority was required and that is the stand of the SRA as well, then, we do not understand how the writ petition filed by the Municipal Corporation can be opposed by the SRA. The whole stand perplexes us to say the least.

61. Once we have dealt with the main contentions of the parties, then, we do not think that the peripheral issues need to be addressed.

62. We are of the opinion that the Municipal Corporation was always at liberty to question the actions of the SRA in relation to its property. The Municipal Corporation's endeavour is to safeguard the larger public interest. It could not have sacrificed and surrendered a valuable piece of land which was acquired by it and vested in it for a public purpose. It could not have ignored its own reservations clamped on the subject property and as reflected in the development plan. Once the Municipal Corporation acted in this manner, then, we do not think that there is any substance in the objection to the maintainability of this petition on the ground of delay. We are of the opinion that the Letter of Approval and the Commencement Certificate being a development of 2012 and the intent of the Corporation in moving this Writ Petition on 16th December, 2013, are enough to turn down the plea of lack of bona fides on its part.

63. Once we have held as above, then, it is not necessary to specifically refer to each and every document and relied upon by the respondent No.3 in Writ Petition No. 147 of 2014.

64. We are of the firm opinion that the scheme of respondent No.3 can go through qua its property (private property). It cannot, in the garb of any LOI seek to develop a public land or a Municipal property or foist its scheme on it. Once the writ petition was filed by the Municipal Corporation and seeking a declaration to the above effect, then, all the more we cannot accept the contentions of the developers. We have already noted the stand of the SRA and expressed our surprise at the same. Apart therefrom, we need not consider the arguments and particularly on interpretation of Appendix-IV of D.C. Regulation No.33(10) and clause 2.8 thereof. The SRA having clearly maintained in its correspondence and in its letters addressed to the Municipal Corporation that its NOC will be specifically required for sanctioning any slum rehabilitation scheme on its property, then, Dr. Sathe's reliance upon other documents and particularly some paragraphs in the affidavits filed on behalf of the Municipal Corporation would not carry the case of these persons any further.

65. As a result of the above detailed discussion, following order:

(i) Rule is made absolute in terms of prayer clauses (a) and (b) in Writ Petition No.147 of 2014.

(ii) As a consequence, Rule in Writ Petition No.1667 of 2013 stands discharged.

(iii) There shall be no order as to costs.