
(2013) 08 BOM CK 0245

In the Bombay High Court

Case No : Writ Petition No. 1273 of 2012

Plymouth Constructions Pvt. Ltd.

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 20-08-2013

Acts Referred:

Citation : (2014) 2 ABR 261

Hon'ble Judges : S.C. Dharmadhikari, J;S.B. Shukre, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.C. Dharmadhikari, J.—By this Writ Petition under Article 226 of the Constitution of India, the Petitioners are challenging the orders dated 20.02.2010 (Annexure BBBB) and dated 20.01.2012 (Annexures EEEE to GGGG). The Petitioners are seeking a declaration from this Court that their proposal in respect of the immovable property being CTS Nos. 599, 658 and 631 is first in point of time and prior to all other proposals in respect of these plots. In furtherance thereof, the Petitioners are seeking a writ of mandamus or any other writ, order or direction in the nature of writ of mandamus directing the Respondent Nos. 3 to 5 and 10 to forthwith process and grant approval to or in any event to consider and decide their proposal or scheme for redevelopment of the slums, namely, Ambedkar Nagar, Shri Ganesh Murti Nagar and Colaba Rajak Co-operative Housing Society situate on plots bearing CTS Nos. 599, 631 and 658 of BBR-VI, including issuance of Annexure-II independently of the proposals of the Respondent Nos. 6 to 8 and 11 or any other party. The other prayers are ancillary or incidental to these main reliefs. The Writ Petition is filed in this Court on 28.03.2012 and later on it was amended on 17.05.2012.

2. It is common ground that the Petitioner No. 1 is a private limited company incorporated under the provisions of the Indian Companies Act, 1956, claiming to be engaged in construction and development of buildings and properties including reconstruction of slums and dilapidated buildings under the provisions

of the Maharashtra Slum Areas (Improvement, Clearance & Development) Act, 1971 (for short "the Slum Act"). The Petitioner No. 2 is the Managing Director of the Petitioner No. 1.

3. The Respondent No. 1 to this Writ Petition is the State of Maharashtra under whose power and authority the Respondent Nos. 2, 3 and 4 are formed. The Respondent No. 2 is the High Power Committee, Government of Maharashtra formed pursuant to the judgment of this Court in Tulsiwadi Navnirman Coop. Housing Society Ltd. and Another Vs. State of Maharashtra and Others, . The Respondent No. 3 is the Mumbai Metropolitan Region Development Authority (for short MMRDA), a statutory body formed u/s 3(1) of the Mumbai Metropolitan Region Development Authority Act, 1974 (for short "MMRDA Act") read with Section 40 of the Maharashtra Regional and Town Planning Act, 1966 and by a notification dated 15th June, 1983 it is appointed as the Special Planning Authority for Backbay Reclamation area. The Respondent No. 4 is the Commissioner of MMRDA, appointed and having its powers and functions under the provisions of the Bombay Municipal Corporation Act, 1888 and by a notification in the Official Gazette dated 9th January, 2003, is deemed to be a Slum Rehabilitation Authority with all the powers and duties of the Slum Rehabilitation Authority under the Slum Act. The Respondent No. 5 is the Slum Rehabilitation Authority (for short "SRA") formed under the provisions of the Slum Act. The Respondent No. 6 is a builder and/or developer carrying on business in the name of M/s. Sneh Developers. The Respondent No. 7 is also a builder carrying on business in the name of M/s. Doshi Darshan Group. The Respondent No. 8 is a builder and/or developer carrying on business in the name of M/s. Shreelekha Enterprises Pvt. Ltd. It is stated that the Respondent Nos. 6 to 8 are interested in and have submitted their plans for redevelopment of the slum at Backbay Reclamation VI. The Respondent No. 9 is a former Municipal Corporator and is the "advisor" to two Organizations, namely, Manav Seva Samiti and Shivaji Banjara Seva Society, who claim to be interested in the redevelopment of the said slum at Backbay Reclamation VI. The Respondent No. 10 is the competent authority appointed by the Government of Maharashtra in exercise of its powers u/s 3 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (Mah. XXVIII of 1971) (As amended by the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) (Amendment and Continuance) Ordinance, 2001 (Mah. Ord. XXVII of 2001) promulgated on 24th August, 2001 in supersession of the Government Notification, Housing and Special Assistance Department No. Suvidha. 1294/CR-3582/Slum-1 dated 26th March, 1998 in respect of the said slum area in the present Writ Petition. The Respondent No. 11 is the Company incorporated and registered under the Indian Companies Act, 1956 and is a 100% subsidiary of Shapoorji and Pallonji & Company Limited. The Respondent No. 11 is engaged in the business of real estate development who apparently has also filed a proposal before the SRA in respect of the said slums.

4. According to the Petitioners, the Respondent No. 3/MMRDA and its

Metropolitan Commissioner (Respondent No. 4) is the competent authority to receive, entertain and decide the applications for slum rehabilitation in the BBR-IV area under the Notifications dated 15.06.1983, 17.03.2001 and 19.01.2003. This has been confirmed, according to the Petitioners, because of the letter dated 12.01.2005 (Annexure-BB) and correspondence between various Government functionaries.

5. It is stated that the Petitioners had submitted their infrastructure project proposal including slum rehabilitation proposal for the areas specified therein to the SRA Cell of the Respondent No. 3 on 30th July, 2004 and the proposal is purportedly still under consideration. However, on or about 2009 proposals from certain other developers, namely, Respondent Nos. 6 to 8, were taken on record and considered by the Respondent No. 5. Simultaneous consideration of more than one rehabilitation application has been specifically struck down as illegal by this Court in *Awdesh Vasistha Tiwari and Others Vs. The Chief Executive Officer, Slum Rehabilitation Authority and Others*, .

6. It is stated that a Public Interest Litigation being PIL No. 45 of 2007 was thereafter filed against the Petitioners in this Court inter alia alleging that the Petitioners did not have the required consent of 70% or more of the slum dwellers. The said PIL was dismissed by this Court with costs, inter alia with the findings that the PIL had been filed at the behest of some one else and the Petitioner therein was abusing the process of law. The SLP in the Supreme Court challenging the said order was also dismissed and it merely set aside the costs imposed in this Court's order.

7. According to the Petitioners, in the affidavit in reply of Mr. Sanjay Raghunath Kurvey, on behalf of State of Maharashtra dated 24th October, 2007, Mr. Kurvey stated that the Deputy Collector/Respondent No. 10 "declared the eligibility of the slum dwellers and prepared Annexure-II as per the electoral roll of 1/1/1995 and found that 2338 hutment dwellers are eligible for rehabilitation out of 6363 hutment dwellers encroached on the said land in question and revised Annexure-II is under process." However, the certified Annexure II has not been issued to the Petitioners till date. After the conclusion of the PIL proceedings, the Respondent No. 3, contradicting all their prior correspondence has been stating that the slum rehabilitation proposal of the Petitioners has neither been approved nor under process.

8. It is stated that pursuant to the litigation proceedings, the Respondent No. 3 sought from the Petitioners a holistic scheme integrating a metro Car Depot with the infrastructure project proposal of the Petitioners and subsequently, the said holistic scheme integrating the metro car depot with the infrastructure proposal, was duly submitted by the Petitioners which didn't require any land reclamation from sea. Therefore, according to the Petitioners, the certified Annexure II is bound to be issued to the Petitioners and the infrastructure project proposal must be processed/approved at the earliest.

9. It is stated that by a notification dated 9th January, 2003 published by the Government in the Official Gazette, it was notified that the Metropolitan Commissioner of the MMRDA shall be deemed to be a Slum Rehabilitation Authority under the Slum Act and shall have all the powers and discharge all the duties of the concerned Slum Rehabilitation Authorities under the said Slum Act, for the purposes of preparation and implementation of infrastructure projects and schemes. Annexure-B to the petition is a copy of Government Notification dated 9th January, 2003.

10. According to the Petitioners, with an intention to provide a holistic scheme and improve the overall infrastructure of the area by inter alia suggesting means to prevent further clearing of mangroves and land reclamation and also providing amenities like schools and hospitals and to redevelop three slums located at Dhobi Ghat situate at CTS No. 599, Ambedkar Nagar and Ganesh Murti Nagar situate at CTC No. 658, all at Backbay Reclamation VI, Colaba, Mumbai 400005 (hereinafter referred to as "the said slums"), the Petitioners by their letter dated 6th January, 2004, presented to and called upon Maharashtra Housing and Area Development Authority (for short "MHADA") to consider a holistic infrastructure development proposal being "The vision for a slum-free Mumbai". The proposal highlighted the need for proper housing, proper water supply, drainage and garbage problems, lack of medical care, lack of education in the area and the need for involving the Government and other institutions in the development of hospitals, schools, vocational training centres, etc. and offered to develop the drainage systems, solutions to garbage disposals, sewage treatment etc. By the covering letter forwarding the said proposal, the Petitioners stated that they were ready to develop as a major infrastructure project the entire area of Cuffe Parade Backbay Reclamation consisting of CTS No. 599 (admeasuring approximately 3,344.51 sq. mtrs.) and CTS No. 658 (admeasuring approximately 1,27,977 sq. mtrs.) which was reserved for transit camp and parade ground as per the then sanctioned Development Plan of 2000 jointly with the MHADA. Annexure-C to the petition is a copy of the said proposal and covering letter dated 6th January, 2004.

11. It is stated that the Petitioners had also sent the said proposal under their letter dated 4th February, 2004 to the Principal Secretary, Urban Development Department and called upon the authorities to give their sanction for the same. Annexure-D to the petition is a copy of the said letter dated 4th February, 2004.

12. According to the Petitioners, they learnt that MHADA, by its letter dated 2nd July, 2004, informed the Respondent No. 4 that the State Government, as per the recommendation of the Sukthankar Committee had taken a decision to redevelop existing transit camps by relocating them to multi-storeyed buildings and that it had selected the transit camp at Backbay Reclamation for redevelopment. However, since the entire land surrounding the transit camp including the land beyond the high-tide line was occupied by slums, MHADA suggested that modifications to the existing sanctioned Development Plan would

be necessary. Amongst other things, MHADA suggested that the road width of the existing road be reduced and also suggested that to enable it to consider a joint venture proposal with the Society of the adjoining slum dwellers, certain portions having an area of about 5.0 ha may be considered for a residential development. Annexure E to the petition is a copy of the said letter dated 2nd July, 2004 addressed by MHADA to the Respondent No. 4.

13. It is stated that the Petitioners have learnt that pursuant to MHADA's said letter dated 2nd July, 2004, the MMRDA (Respondent No. 3) at a meeting held on 06.07.2004 resolved and sanctioned steps for modification of the Development Plan and for change of the existing reservation of transit camp and parade ground in the sanctioned development plan of the Backbay Reclamation Scheme (hereinafter referred to as "BBRS") to Residential Zone u/s 37(1) of the MRTD Act. The MMRDA also noted MHADA's proposal to change the existing Development Plan by reducing the width of the road going from Prakash Pethe Marg to the sea from 45 metres to 13 metres and the remaining area of the road be changed to "Residential Zone" and ultimately resolved and sanctioned steps for a road width of 24 meters, which was regarded as being proper for increasing traffic on the said road in future, especially since the proposed infrastructure project of the jetty would be undertaken at the end of the said road. The Metropolitan Commissioner (Respondent No. 4 herein) noted that at the end of the said road, there was a proposal for a jetty for a proposed passenger water transport scheme and therefore the width of that road should be at least 24 meters to enable the road to withstand increasing traffic in the future. The said decisions were taken and resolutions passed by MMRDA as the Special Planning Authority (for short "SPA") for the said area. The said Resolutions set out that the Government's sanctions for overall development of the said area, including development of infrastructure facilities. Annexure F to the petition is a copy of the minutes of the meeting held on 06th July, 2004.

14. It is stated that by its letter dated 2nd August, 2004 bearing subject "Change of Reservation from Parade Ground to Residential at Backbay Reclamation Scheme" addressed to the Director General of Police Maharashtra State, the MMRDA informed him that Government of Maharashtra had appointed the MMRDA as SPA for Backbay Reclamation Scheme area by its notification No. BBR. 1082/CR - 140/1607/UD-1 dated 15th June, 1983 and called upon him to give his consent to change of reservation from transit camp and parade ground to "Residential" for Plot Nos. 87B and 97C as the entire area was covered by slums. Annexure G to the petition is a copy of the said letter dated 2nd August, 2004.

15. It is further stated that the MMRDA, by its Notice bearing No. TCP(P-1)/BBRS/379/2004 dated 24th August, 2004 notified that the Government of Maharashtra had appointed the MMRDA to be the SPA for the area comprising blocks III, IV, V and VI of the Backbay Reclamation Scheme and further that MHADA had recommended the changes in the said reservation viz. Plot No. 97C admeasuring about 16,000 square meters in block VI of BBRS reserved for

transit camp to "Residential"; plot No. 87-B admeasuring about 18000 square metres from "Parade Ground" to "Residential" and reduction of the width of the road as above. The notification also stated that the MMRDA i.e. Respondent No. 4, proposed to develop the entire area as per the notification. Annexure H to the petition is a copy of the said notification.

16. It is stated that there are a total of 22 Societies existing on the said plots i.e. plot Nos. 87-B and 97-C. The said Societies by resolutions of their General Bodies decided to appoint the Petitioner No. 1 as the developers to carry out the redevelopment scheme through the expertise of the Petitioners. Annexure I to the petition is a copy of the Resolution passed by one such society and the letter of appointment as a specimen. According to the Petitioners, the said Resolutions/ letters are during the period 2003-2004.

17. Pursuant thereto, the occupants of the slums on the said lands gave their collective consent and individual consents in favour of the Petitioner No. 1. Petitioner No. 1 holds individual consents/agreements of about 4000 occupants (constituting well over 70% of the eligible occupants). Further, each of the 22 societies also duly executed Powers of Attorney and Development Agreements with the Petitioner No. 1 regarding redevelopment of their respective areas. Annexure J to the petition are specimen true copies of the (i) power of attorney, (ii) development agreement, (iii) agreement between slum dwellers and developers and (iv) affidavit cum declaration by the slum dwellers. All the said consents and relevant documents were submitted to the MMRDA by the Petitioners as a part of their proposal for redevelopment of the said slums.

18. It is stated that by their letter dated 16.07.2004, the Petitioners informed the Respondent No. 10/Deputy Collector (Encroachment) that they were developing the said slums and requested him to issue the Annexure II for the same. Annexure K to the petition is a copy of the letter dated 16th July, 2004. In reply to the this letter, the Respondent No. 10 addressed a letter dated 19.07.2004 requesting the Petitioners to approach the Chief Officer of the Respondent No. 5 or any competent authority for the Annexure II and stated that the Petitioners' application was filed at this stage. Annexure L to the petition is a copy of the letter dated 19th July, 2004.

19. It is stated that under cover of their letter dated 30th July, 2004, the Petitioners accordingly submitted to the Respondent No. 3 their detailed infrastructure project proposal for the entire area as a part of the proposed Urban Renewal Development of Respondent No. 3, including the redevelopment proposal for the said slums in respect of the area of about 1,04,000 square metres occupied by about 4200 slum tenements and for construction of a jetty at the sea end of the road in order to encourage the transportation through sea and improve the infrastructure and environment. The said infrastructure project prepared by the Petitioners also inter alia provided for clearance of the slums on the D.P. road leading to the proposed jetty and around the foot path as set out in the plan enclosed with Annexure I, as it was necessary for the overall

development of the area. The Petitioners submitted all the necessary documents as per Annexure I i.e. the said proposal provided for the slum rehabilitation scheme under DCR 33 (10), Annexure-II i.e. the list of slum dwellers and Annexure III i.e. an assessment of the financial capacity of the developer to execute the slum rehabilitation scheme. Annexure-M to the petition is a copy of the Petitioners' said letter dated 30th July, 2004 without the Annexures. Annexure N to the petition are the copies of Government notifications approving the landing facilities for the water transport services at selected sites on the western coast of Mumbai City including at the said Back Bay Reclamation (BBR) area.

20. Pursuant to the said proposal, by its letter dated 03.08.2004, the Respondent No. 3 informed the Petitioners to get the Annexure-II issued from the Respondent No. 10/Deputy Collector for processing the above slum rehabilitation scheme. Pursuant thereto, the Petitioners by their letter dated 4th August, 2004, once again called upon the Respondent No. 10/Deputy Collector to issue certified Annexure-II. Annexure O to the petition is a copy of the letter dated 3rd August, 2004 from the Respondent No. 3 to the Petitioners and Annexure P is a copy of the letter dated 4th August, 2004 from the Petitioners to the Respondent No. 10.

21. It is stated that by its letter dated 06.08.2004 addressed to Respondent No. 3, the Petitioners once again set out its proposal for infrastructure development envisaging the development of road, jetty, water ways, environment protection, hospital and school. Hence the Petitioners requested the Respondent No. 3 to approve all the above mentioned proposals for the urban renewal infrastructure development. Annexure Q to the petition is a copy of the said letter dated 6th August, 2004 from the Petitioners to the Respondent No. 3.

22. According to the Petitioners, by their letter dated 10.08.2004 to the SRA Cell of the Respondent No. 3, the Petitioners submitted Annexure II, in regard to the slums on the Parade Ground plot No. 87-B and noted that the Annexure II for Colaba Rajak Consumers Co-operative Housing Society" (registered) had already been approved by the Respondent No. 10/Deputy Collector for a prior slum rehabilitation proposal of another developer which was eventually rejected and that the approval now sought was for the balance surrounding slum area on the Parade Ground. On the same day at a meeting held at the office of the Principal Secretary (Housing) of the Government of Maharashtra at Mantralaya, which was attended by the Chief Engineer of the Respondent No. 3, the Additional Collector, the Respondent No. 10/Deputy Collector, the Desk Officer and the representative of the Petitioners, the Petitioners' proposal for redevelopment of the said slums was discussed. The minutes prepared by the Government record that the representative of the Petitioners stated that consents of approximately 4000 hut dwellers were available and hence on that basis Annexure II could be prepared and a survey of 300 to 400 huts on the side of Rajak Nagar had to be carried out. The Additional Collector (Enc) informed that Annexure II could be provided after carrying out the survey of the slum holders on plot No. 87 on the side of

Rajak Nagar and that for this purpose it would be necessary that such a proposal should be received at his office from the Respondent No. 3. Accordingly the Chief Engineer of the Respondent No. 3 agreed to send the proposal from the SRA Cell of the Respondent No. 3 to the Respondent No. 10 for verification of Annexure II. The Secretary, Housing, also so directed. Annexures R and S to the petition are the copies of letter dated 10th August, 2004 and the minutes of the meeting dated 10th August, 2004 as circulated by the Government of Maharashtra respectively.

23. It is stated that out of abundant caution by its letter dated 11.08.2004, the Petitioners forwarded to the Respondent No. 10/Deputy Collector, the Annexure-II of the Parade Ground slums, which had earlier been sent to the SRA. The Petitioners once again noted that the Annexure II for some portion of Colaba Rajak Consumers Co-operative Housing Society had already been approved by the Respondent No. 10/Deputy Collector for a prior rehabilitation proposal of another developer which was eventually rejected. Annexure T to the petition is a copy of the said letter dated 11th August, 2004.

24. It is stated that as decided and directed at the meeting on 10th August, 2004, by a letter dated 12th August, 2004, the SRA Cell of the Respondent No. 3 forwarded the Annexure-II of the Petitioners to the Respondent No. 10/Deputy Collector for scrutiny and certification in the format enclosed therewith. Annexure U to the petition is a copy of the letter dated 12th August, 2004. The Respondent No. 10/Deputy Collector by its letter dated 13th August, 2004 to the Respondent No. 4 recorded that the proposal for Annexure II was received from SRA Cell of MMRDA and from SRA Department. Accordingly, the Respondent No. 4 was requested to furnish a copy of any notification of the Government in that behalf. Annexure V to the petition is a copy of the letter dated 13th August, 2004 from the Respondent No. 10/Deputy Collector to the Respondent No. 4.

25. It is stated that on 10th September, 2004 the Petitioners received a letter of that date from the Respondent No. 10/Deputy Collector stating that if the Annexure II was sent to him from the office of the Respondent No. 3, then they would start the survey of hutment dwellers. Annexure W to the petition is a copy of the said letter dated 10th September, 2004.

26. According to the Petitioners, with a view to facilitating the progress of the matter, the Petitioners once again enclosed the Annexure II under cover of their letter dated 10th September, 2004 to the Executive Engineer, SRA Cell of the Respondent No. 3, asking them to scrutinize and issue Annexure - II. Annexure X to the petition is a copy of the said letter received by the Respondent No. 4 on 10th September, 2004. On the same day, the Executive Engineer, SRA Cell of the Respondent No. 3 by his letter dated 10th September, 2004 forwarded the said Annexure II to the Respondent No. 10/Deputy Collector to scrutinize and issue certified Annexure-II in the format enclosed. Annexure Y to the petition is a copy of the said letter dated 10th September, 2004.

27. It is stated that at a meeting held on 4th November, 2004 the Respondent No. 10/Deputy Collector acknowledged the proposal of the Petitioners and stated that the work of survey of the slum holders at Ambedkar Nagar and Rajak Nagar had been completed and the work of their eligibility would be completed at the earliest, after which the work of Ganesh Murti Nagar would be taken up. In furtherance of the same the Principal Secretary (Housing) gave appropriate directions for completion of the above-mentioned work in a time bound period. Annexure Z to the petition is a copy of the minutes of the meeting dated 4th November, 2004 as circulated by the Government under cover of its letter dated 18th November, 2004.

28. It is stated that by his letter dated 22nd December, 2004, the Respondent No. 10/Deputy Collector required the Superintendent Land Records to contact the Petitioner No. 1 to obtain necessary information and further to carry out a survey and demarcate the land mentioned therein and accordingly forward the survey plan and report in connection with the area. Annexure AA to the petition is a copy of letter dated 22nd December, 2004.

29. It is stated that by its letter dated 12th January, 2005 in response to the letter dated 13th August, 2004, the Respondent No. 3 confirmed to the Respondent No. 10/Deputy Collector that it was the SPA for Backbay Reclamation ("BBR") area and that the Commissioner, MMRDA was the Slum Rehabilitation Authority for the implementation of Slum Rehabilitation Projects for housing the Project Affected People ("PAP") affected by vital public projects viz. MUIP and MUTP. A copy of the Government notification dated 9th January, 2003 declaring the Metropolitan Commissioner as the "Deemed Slum Rehabilitation Authority" was enclosed therein. Annexure BB to the petition is a copy of the letter dated 12th January, 2005.

30. It is stated that as a meeting held on 14th January, 2005, attended by the Deputy Secretary, Additional Collector, Respondent No. 10/Deputy Collector, Superintendent Land Records and the Petitioner No. 2, the Additional Collector informed that the survey of all three localities had been carried out and the work of ascertaining eligibility was still going on. The Additional Collector, required the Petitioner No. 2 to provide the slum dweller's proof of residence to support their eligibility in the redevelopment scheme. The Principal Secretary (Housing) directed that the work of deciding eligibility, should be completed on or before 24th January, 2005 and that City Survey Department should complete the measurement work by that date also. The MMRDA be required to complete the work of corrections to the HTL and survey of the area at the earliest. Annexure CC to the petition is a copy of the minutes of the meeting dated 14th January, 2005 as circulated by the Government.

31. The Respondent No. 4 by its letter dated 17th February, 2005 gave its no objection to the Collector to carry out a survey and measurement of the said slums under the redevelopment scheme for preparation of plans as per the survey and further informed that a representative of the Respondent No. 4 would

also remain present at the time of carrying out the joint measurements. Annexure DD to the petition is a copy of the letter dated 17th February, 2005.

32. Thereafter, by its letter dated 6th April, 2006, the Centre for Earth Science Studies (for short "CESS") provided the Urban Development Department, Government of Maharashtra, (for short "UDD") with a cost estimate for the work to be conducted for the purpose of fresh demarcation amounting to a sum of Rs. 3,75,000/-. Accordingly, the UDD, by its letter dated 25th April, 2006 informed the Petitioners that the matter regarding verification of the HTL in BBRS was referred to the CESS and further directed the Petitioners to submit the demand draft for the amount requested by the CESS for onward transmission to the CESS. The Petitioners duly made payment of the said sum by a demand draft on 15th May, 2006 to the UDD. The UDD thereafter forwarded the aforesaid demand draft to the CESS vide letter dated 16th May, 2006 and was further acknowledged by the CESS by its letter dated 29th May, 2006 which was also marked to the Petitioners. Annexures JJ and KK to the petition are the copies of letters dated 6th April, 2006 and 25th April, 2006. Annexure LL is a copy of the letter dated 15th May, 2006 and the demand draft dated 15th May, 2006. Annexures MM and NN are the letters dated 16th May, 2006, and the letter dated 29th May, 2006.

33. Further pursuant to the directions of the Urban Development Department the CESS presented their findings to Urban Development Department vide their detailed report dated August, 2006. Annexure OO to the petition is a copy of the said detailed report dated August, 2006.

34. It is stated that the Respondent No. 10/Deputy Collector and Competent Authority issued a public notice dated 16th March, 2007 stating inter alia that draft certified Annexure II of the slum holders in the locality of Ganesh Murthi Nagar, Ambedkar Nagar and Razak Society, Dhobi Ghat had been prepared and to all the slum occupants inviting objections/complaints if any with regards the eligibility of the slum dwellers, within 15 days. Annexure QQ to the petition is a copy of the notice dated 16th March, 2007. Pursuant thereto the office of the Respondent No. 10/Deputy Collector and Competent Authority issued three separate notices dated 28th March, 2007, 30th March, 2007 and 7th April, 2007 to the slum dwellers informing them of its visit to the site personally to re-inspect the original documents of all the slum dwellers. Annexures RR, SS and TT to the petition are copies of the said three notices.

35. According to the Petitioners, on or about 30m March, 2007, two Organizations, viz: Manav Seva Samiti, through one Dhananjay U. Yadav purporting to be its President and the Shivaji Banjara Seva Society through one Shivaji Shankar Jadhav conspired to file false and fabricated complaints with the Commissioner, MMRDA and complained to the Commissioner, MMRDA, that the consent of 600 members of the organization were taken on false representations by the Petitioners and that they had purportedly lost faith in the developer i.e. Petitioner No. 1 herein. They also purported to enclose original cancellation

letters of me 600 members. Annexure UU to the petition is a copy of the said letter dated 30th March, 2007. Further, Shivaji Banjara Seva Society, which submitted the complaint through one Shivaji Shankar Jadhav, alleged in a letter dated 3rd April, 2007 to the Commissioner, MMRDA, that the consent of 1078 members were allegedly fraudulently obtained by the Petitioners and along with the said complaints, the copies of purported cancellation letters issued by its members to the said Company were submitted. Annexure VV to the petition is a copy of the said letter dated 3rd April, 2007 addressed to the Commissioner. The Petitioners learnt of these false complaints subsequently.

36. It is stated that by a letter dated 6th August, 2007 from the Respondent No. 10/Deputy Collector to the Respondent No. 3, a reference was made to the various meetings held with regard to the slum rehabilitation scheme for the said slums and the complaint received from the said Puran Doshi and a request was made for directions as to whether the action of issuing Annexure-II should continue. Annexure XX to the petition is a copy of the said letter dated 6th August, 2007.

37. According to the Petitioners, it appears that by a letter dated 22nd August, 2007 the Respondent No. 3 purported to inform the said Puran Doshi (Respondent No. 9 herein) that the SRA Cell of the Respondent No. 3 had neither approved any slum rehabilitation proposal on CTS No. 658 plot nor was it processing any slum rehabilitation proposal on that plot and further that the SRA cell of the Respondent No. 3 had no role in the finalisation of Annexure II for CTS No. 658. Respondent No. 3 purported to inform Respondent No. 9 that he may submit his objections/documents regarding cancellation of consent, if any, directly to the Respondent No. 10/Deputy Collector who was stated to be the competent authority for finalising Annexure II. Annexure YY is a copy of the said letter dated 22nd August, 2007. The Petitioners learnt of the said letters dated 6th August, 2007 and 22nd August, 2007 only much later, when copies thereof were obtained pursuant to applications under the Right to Information Act, 2005.

38. It is stated that by his letter dated 20th September, 2007, the Respondent No. 10/Deputy Collector sought from the Respondent No. 3, clear directions in regard to issuance of Annexure II in regard to the Petitioners' proposal regarding plot No. 87/B, Block VI, BBR C.S. Nos. 596, 651, 651/1 (Ambedkar Nagar and Ganesh Murti Nagar). The Respondent No. 10/Deputy Collector noted inter alia that their City Surveyors has surveyed totally 6363 hut dwellers of the said slum on the basis inter alia that of the proofs and consent letters submitted by the Petitioners and found 2360 to be eligible. The Respondent No. 10/Deputy Collector also referred to the above letter dated 22nd August, 2007 (wherein Respondent No. 3 had indicated it was not concerned with issuance of Annexure II) and requested the Respondent No. 3 to immediately clear the doubts. It was also stated that till then, action on Annexure II was being stayed. Annexure ZZ to the petition is a copy of the letter dated 20th September, 2007.

39. It is stated that by its final order dated 20th February, 2008 this Court

dismissed the said PIL-Writ Petition No. 45 of 2007, holding inter alia that the same had not been filed by the petitioners therein but by someone else and that the petitioners were being used to abuse the process of law. In regard to the consideration of the scheme of the Petitioner No. 1 herein (Respondent No. 9 in the said PIL) a direction was sought by the petitioners in the PIL that directions should be given not to accept the said scheme. The said order refused to give such directions, holding on this aspect as under: "The learned counsel of the petitioners has not been able to show us that there is any approved scheme for rehabilitation. Therefore, the public interest litigation is premature. The learned counsel further submits that in one of the affidavits, the respondents have stated that the proposal had been presented by the respondent No. 9 which has not been accepted by the Government and therefore we should direct that no proposal from the respondent No. 9 should be accepted. We are afraid that we cannot do that. If any proposal is pending before the concerned authorities, it is for the concerned authorities to accept the proposal or reject the proposal for valid reasons. If any proposal is accepted and if anybody is aggrieved, he is at liberty to take re-course to law". Annexure EEE to the petition is a copy of the said Order dated 20th February, 2008.

40. The SLP against the said order was dismissed by the Supreme Court of India's order dated 21st July, 2008 wherein only the order of costs was set aside. Annexure FFF is a copy of the order dated 21st July, 2008.

41. It is stated that by his letter dated 22nd February, 2008 to the Respondent No. 3, the Respondent No. 10/Deputy Collector sought directions from Respondent No. 3 as to whether the work on Annexure IE of Petitioner No. 1's scheme should be continued further or otherwise. The Deputy Collector sought a reply within 8 days failing which it was stated that the case of Petitioner No. 1 would be disposed off. Annexure GGG to the petition is a copy of the said letter.

42. Thereafter by a letter dated 21st April, 2008 from the Assistant Metropolitan Commissioner (Land and Property Division) of Respondent No. 3 to the Respondent No. 10/Deputy Collector and Competent Authority, it was stated inter alia that no slum rehabilitation scheme had been sanctioned and action had been continued by the authority at Ganeshmurti Nagar, Ambedkar Nagar and Rajak Nagar at Colaba and that therefore, the question of issuing Annexure II by the authorities in connection with the slum area at the said place did not arise. Reference was also made in the said letter to the proceedings in the High Court and the order of the High Court therein. The said letter also stated that as for the affidavit of MMRDA filed in the said High Court proceedings, the slum area was being obstructed by the Metro Rail car shed. Annexure HHH to the petition is a copy of the said letter dated 21st April, 2008.

43. According to the Petitioners, at a high level meeting held on 4th June, 2008 at Mantralaya at the instance of the Government of Maharashtra in connection with Petitioner No. 1's slum rehabilitation scheme for Ambedkar Nagar and Ganesh Murti Nagar, (which was attended by the Chief Minister, Principal

Secretary, UDD, of Maharashtra, secretary to the Chief Minister, CEO of the Respondent No. 5, Commissioner of the Respondent No. 3 and the Petitioner No. 2) certain difficulties arising from reservation of part of the land as Metro Rail car shed depot were pointed out and it was resolved that after proper discussions with the Petitioner No. 2 and the Commissioner of the Respondent No. 3, efforts should be made to resolve the difficulties of the said scheme. Annexure III to the petition is a copy of the said minutes of the meetings dated 4th June, 2008. At the said meeting, the Petitioners had made a detailed presentation of the project.

44. It is stated that the proposed infrastructure project of providing car shed at Colaba at BBR would affect the slum dwellers in the area who were part of the Petitioners' aforesaid slum rehabilitation proposal. Accordingly, by a letter dated 19th September, 2008 the Respondent No. 3 sought from the Petitioners a holistic scheme integrating the Metro Car Depot with SRA and other rehabilitation schemes in the area and the plans showing the CTS Nos., Development Plan extract of the area showing High Tide Line and other documents expeditiously. Annexure JJJ to the petition is a copy of the said letter dated the 19th September, 2008.

45. It is stated that the Petitioners by their letter dated 6th October, 2008 submitted to the Respondent No. 5 a holistic scheme incorporating a Metro Depot as part of the Slum Redevelopment Scheme for the said slums which did not require any land reclamation from sea. The Petitioners referring to the meeting dated 4th June, 2008 with the Chief Minister and to the subsequent meetings on 6th and 11th June, 2008 and pointed out inter alia, that they had spent a lot of time, effort and money in obtaining consents of the slum dwellers and getting the scheme to its present status. The Petitioners stated that they held voluntary consent of over 4000 families, covering about 25,000 people and were also instrumental in providing several amenities to the said slums, like educational aids (setting up Anganwadi), medical aids, free tanker water distribution etc. The Petitioners called upon Respondent No. 5 not to accept any other proposal for SRA scheme for the said slum as they had already submitted their scheme in the year 2004. Annexure KKK to the petition is a copy of the letter dated 6th October, 2008.

46. Further by their letter dated 25th March, 2009, the Petitioners recorded that all documents had been given and informed the Respondent No. 3 that a fresh survey of Cuffe Parade was done for the Metro Rail and handed over to the Metro Department in November, 2008 and accordingly requested the Respondent No. 3 to inform them whether they were interested in making the Metro Depot at the spot indicated and if not, then to forward the Petitioner's scheme of 2004 for redevelopment of the said slums to the Respondent No. 5. Annexure LLL to the petition is a copy of the letter dated 25th March, 2009. Further as required by Respondent No. 3, the Petitioners also carried out a survey of one kilo metre of road leading upto Respondent No. 3's proposed Metro Depot as a part of studying the feasibility of integrating the metro car depot and infrastructure

project proposal of the Petitioners and a layout plan was also prepared pursuant to the survey.

47. It is stated that pursuant to the Respondent No. 3's interest in the Petitioners' proposal for integrating the car depot of the Metro Rail into the overall development scheme by their letter dated 22nd April, 2009 the Petitioners informed Mr. P.R.K. Murthy, Chief Transport & Communications Division of Respondent No. 3 about the work done by Petitioners towards implementation of the slum rehabilitation scheme and after setting out the relevant details and facts called upon them to take up the issue with the concerned authorities to issue a certification of their Annexure II at the earliest and accord their approval to the integrated and holistic infrastructure proposal. Annexure MMM to the petition is a copy of the letter dated 22nd April, 2009 with the layouts of the proposed integrated metro depot annexed thereto. The Petitioners also appraised Mr. Mhaikar, Joint Commissioner of MMRDA and Ms. Vijaya Laxmi, Additional Chief (UMMTA) of Respondent No. 3 about the work proposed to be carried out by the Petitioners on Metro Depot plan from time to time through various correspondences. Further the Petitioners addressed similar letters to the Chief Minister of State of Maharashtra, Respondent No. 1 and other Government authorities setting out in detail how the Metro Car Depot could be integrated with the slum rehabilitation scheme, the efforts taken by the Petitioners to carry out the infrastructure project scheme and therefore certified Annexure-II must be issued to the Petitioners.

48. According to the Petitioners, the Petitioners subsequently learnt, that a proposal for the rehabilitation scheme for one of the said slums viz. Ganesh Murti situated on plot bearing CTS No. 658 was submitted on or about 22nd May, 2009 by one M/s. Sneh Developer, (Respondent No. 6 herein) and that SRA forwarded the said papers to the Collector Mumbai for issuing the Annexure-II. The said proposal was illegally sought to be taken up for consideration even though the previous proposal of M/s. Plymouth Construction Pvt. Ltd. was still under active consideration and in regard to which various steps had already been taken as above.

49. Having learnt of the proposal of Respondent No. 6, the Petitioners by their letter dated 29th June, 2009 to the SRA, i.e. Respondent No. 5 pointed out in detail the correct facts regarding the Petitioners' said proposal submitted in 2004 and the numerous steps taken thereafter in respect of the same. The Petitioners also stated that they had learnt of Respondent No. 6's proposal of 22nd May, 2009 and recorded that as the Petitioners' proposal was under consideration, no other scheme for redevelopment could legally be entertained in the matter of schemes submitted by other developers for the same plots of land. The Petitioners drew attention to the relevant binding law in this regard. Annexure NNN to the petition is a copy of the said letter dated 29th June, 2009.

50. It is stated that at a review meeting dated 1st July, 2009 at Mantralaya, convened by the Government, (attended by the Additional Chief and

Superintendent Engineer of the Respondent No. 3, the Chief Executive Officer of the Respondent No. 5 and the Petitioners), the Petitioners; letter dated 22nd June, 2009 was considered in regard to integration of the Metro Rail Car depot into the Slum Rehabilitation Scheme and various decisions taken in regard to the said project proposal submitted by the Petitioner No. 1 which was expressly stated to be "under consideration". A time schedule was decided upon within which time all concerned parties had to act. Respondent No. 3 agreed to demarcate the Metro Car Depot area after which, the Petitioner No. 1 was required to submit its detailed project plan incorporating the said requirements. It was also decided that till the various agreed steps were taken no construction was to be carried out nor any scheme to be implemented. It was also decided that an updated survey of eligible slum dwellers be carried out by the Collector. Annexure OOO to the petition is a copy of the minutes of the meeting dated 1st July, 2009 as circulated by the Government.

51. It is stated that acting upon the said decisions, by a letter dated 8th September, 2009, the Respondent No. 3 forwarded to CEO of Respondent No. 5, the Petitioner's application dated 30th July, 2004 containing the Petitioners' proposal for slum rehabilitation and all the necessary documents and correspondences for the same and requested Respondent No. 5 to do the needful. The said letter noted the various steps taken pursuant to the proposal and that after the complaints received in 2007, the scheme was not processed further and no approval was given. Annexure QQQ to the petition is a copy of the letter dated 8th September, 2009.

52. By the Petitioners letter dated 15th September, 2009, written to the CEO, SRA i.e. the Respondent No. 5 they informed him that as per the Minutes of the Meeting held on 1st July, 2009 and 17th July, 2009 at Mantralaya, it was decided that MMRDA should forward the Petitioner's scheme for redevelopment submitted to their office on 30th July, 2004 to SRA, MHADA for further processing by SRA and that this had been done on 9th September, 2009 when MMRDA forwarded the file papers to the office of the SRA vide their covering letter dated 8th September, 2009. The Petitioners also once again set out the correct legal position that no other scheme could be considered until the prior scheme proposals were first processed and considered. The Petitioners accordingly requested the SRA to process their scheme with immediate effect. Annexure SSS to the petition is a copy of the said letter dated 15th September, 2009.

53. According to the Petitioners, they subsequently also learnt that the Respondent No. 7 had also purported to file another proposal made in or about September 2009 in respect of the slums situated on C.T.S. No. 658(Part) Colaba Division. The Petitioners' proposal is for the entire plot i.e. C.T.S. No. 599, CTS No. 651 and C.T.S. No. 658. The said proposal was filed by Respondent No. 7 directly with Respondent No. 5 and not with Respondent No. 3 which is the Special Planning Authority in respect of the said area and whose Metropolitan

Commissioner is the deemed Slum Rehabilitation Authority, as per the Notifications dated 17th March, 2001 and 9th January, 2003. Further the Petitioners also learnt of yet another Application/proposal made in or about April, 2009 by Respondent No. 8 herein in regard to the slums on C.T.S. Nos. 658 and 599. It further appears that the said proposals of Respondent Nos. 6, 7 and 8 were made at the instance and with the backing of Respondent No. 9, an Ex-Municipal Corporator wielding considerable influence in the corridors of power, with the mala fide aim of blocking the approval to the Petitioners' proposal.

54. Being aggrieved by the acceptance of the abovementioned proposals, the Petitioners filed an Application bearing No. 1016 of 2009 before the Respondent No. 2 challenging consideration of the rehabilitation proposals of the Respondent No. 6. The Petitioners also filed another application Nos. 1173 of 2009 and 1198 of 2009 challenging the consideration of the proposal for rehabilitation of Respondent Nos. 7 and 8 respectively. An application No. 947/2009 filed by one Manav Seva Samiti CHS (Prop) was also pending before Respondent No. 2 challenging the alleged inaction of the Respondent No. 5 to take necessary action to sanction a scheme u/s 33(10) of the development control regulations as allegedly given by one, M/s. Ace Consultants.

55. It is stated that by a common order dated 28th January, 2010 the Respondent No. 2 dismissed the applications on the ground that the Respondent No. 5 was yet to take the decision of processing one application out of three proposals and hence no cause of action had arisen on that date. Annexure-TTT to the petition is a copy of the order dated 28th January, 2010 although the said order states that "detailed order follows", as far as the Petitioners are aware no such further order has been passed and has been received by the Petitioners. The CEO of Respondent No. 5 (SRA) is a member of the Committee (Respondent No. 2) and is a party to the said order. The above applications were reheard by Respondent No. 2 at the request of the Manav Seva Samiti/Respondent No. 7 on 20th February, 2010.

56. It is stated that by a letter dated 22nd February, 2010, the Petitioner sought a copy of the Minutes of the High Power Committee held on 28th January, 2010 and 20th February, 2010 in Application Nos. 947 of 2009, 1016 of 2009, 1173 of 2009 and 1198 of 2009. Annexure UUU is a copy of the said letter dated 22nd February, 2010.

57. In response thereto, the Respondent No. 2 furnished a copy of "Minutes of the Decision" (certified to be a True Copy on 25th February, 2010). The said Minutes, inter alia, recorded the "correct factual position on record" as being that "The Applicant in Application No. 1016/2009 has submitted Proposed, Urban, Renewal Development under MUIP of MMRDA for infrastructure projects on land situated at Block VI, BBR Scheme of MMRDA at Cuffe Parade, Colaba, Mumbai which was referred to S.R.A. for further needful vide letter dated 8th September, 2009 by MMRDA." The said Minutes also recorded that "S.R. Authority is yet to take the decision of processing the three proposals. Hence, as on today no cause

of action. Application stands dismissed accordingly." Annexure-VVV to the petition is a copy of "Minutes of the Decision" (certified to be a True Copy on 25th February, 2010).

58. By three subsequent letters, the Petitioners' Advocate wrote to the Respondent No. 2 seeking a certified copy of the order passed by Respondent No. 2 on 20th February, 2010. The said letters were received by the Respondent No. 2 on 25th February, 2010. Annexures-WWW-1 to WWW-3 are copies of the said letters.

59. Thereafter, the Petitioners filed the Writ Petition No. 2094/2011 seeking a direction to the Slum Rehabilitation Authority (for SRA) to process, grant and approve their slum rehabilitation scheme. On 25.10.2011, the MMRDA informed the SRA that the Metro Car Depot was no longer proposed at Colaba and that it is now proposed at Mahalaxmi.

60. The Petitioners are also relying upon certain documents including the Written Submissions filed by the Respondent No. 7 before the SRA in January, 2012 and what the Petitioners are urging is that after filing of the present Writ Petition, they learnt that the impugned orders dated 20.01.2012 passed by the Respondent No. 5 were quashed and set aside by the Respondent No. 2 vide an order dated 17.03.2012 in the Respondent Nell's Application No. 19 of 2012 before the Respondent No. 2. Further, vide said order dated 17.03.2012 the Respondent No. 2 directed the Respondent No. 5 to implement the Respondent No. 2's directions dated 15.10.2011 in Application No. 267/2011 and record (reject) the three proposals of the Respondent Nos. 6 to 8. Annexure-JJJJ to the Petition is a copy of the order dated 17.03.2012 passed by the Respondent No. 2.

61. It is in these circumstances that the present Writ Petition has been filed and later on amended.

62. Mr. Chinoy, learned Senior Counsel appearing for the Petitioners, submitted that a perusal of the petition and annexures would show that the proposed Mumbai Urban Development Infrastructure Project (for short "MUDIP") under the MMRDA for infrastructural project of the land situate at Cuffe Parade, Coloba has been included and the approval was sought by the Petitioners for inclusion of their proposal/project. They enclosed their proposal Annexures-I, II and III. Thus, this is a slum redevelopment scheme. The MMRDA replied to the Petitioners and requested them to get Annexure-II from the Respondent No. 10/ Deputy Collector (Encroachment) for processing their slum rehabilitation scheme further. Mr. Chinoy, therefore, submits that there was a scheme under scrutiny and verification and submitted by the Petitioners prior in point of time. In these circumstances the High Power Committee (for short HPC) could not have passed the order and which is to the above mentioned effect. The order of the High Power Committee is void. There is no reconciliation possible between the minutes and the order of the High Power Committee.

63. Alternatively, if this Court comes to a conclusion that there is no

contradiction or inconsistency or incompatibility between the minutes and the order of the HPC, then, the basis of conclusion in the order is factually incorrect and perverse. The MMRDA's affidavit filed in this Writ Petition is also false as it cannot disclaim the application of the Petitioners in this manner. In the teeth of the statutory provisions, namely, Section 17(1), (2) and (3) of the MMRDA Act, 1974 and non obstante clause, the order of HPC is bad in law.

64. Elaborating his challenge to the order of HPC, Mr. Chinoy submits that the Respondent No. 5 cannot, could not have and ought not to have entertained or considered any other proposals for redevelopment of the said slum areas till the Petitioners' proposal is finally disposed off. Till date the Petitioners' proposal is pending consideration. The Petitioners have fulfilled all the required conditions. Accordingly the Respondents are duty bound and Respondent No. 2 was and is duty bound to direct the authorities to consider, process and decide Petitioners' proposal alone and not to proceed with consideration or scrutiny of any other proposals submitted by the Respondent Nos. 6 to 8 or any one else. The Respondents have acted patently illegally and without jurisdiction in purporting to do so. Mr. Chinoy submits that despite repeated communications by the Petitioners to the Respondents and particularly Respondent Nos. 3 and 5, the Respondents have till date failed and neglected to take any decision in the matter of the Petitioners' proposal even though on the facts of the case, the same is liable to be and bound to be approved.

65. Mr. Chinoy then submits that the said impugned order dated 20-2-2010 passed by the Respondent No. 2 has failed to take into account the following material considerations:--

a. That the relevant facts stated above make it clear that the Petitioner No. 1 had submitted a valid proposal vide its letter dated 30.7.2004;

b. that all relevant authorities including Respondent Nos. 3 and 5 at all times treated the Petitioners proposal filed vide letter dated 6th August, 2004 as a valid proposal and in fact acted upon the same which is evident from the facts and circumstances which are stated above particularly inter alia in paragraphs p, q, s, t, u, v, w, y, aa, bb, cc, dd, ee, ff, gg, hh, ii, jj, rr, aaa, ccc, ddd, fff, jjj, kkk, III of the petition. This is inter alia also evident from the Affidavit in reply filed by the Respondent No. 1 and the relevant statutory authorities in the PIL referred to in paragraph (ss) of the petition;

c. in the facts and circumstances of the present matter the MMRDA and/or the Respondent No. 2 are estopped from contending that the Petitioner No. 1 did not submit a valid application.

d. that the petitioner No. 1's proposal was in fact the first proposal in respect of CTS Nos. 599, 658 and 631 (in respect of which the Respondent Nos. 6 to 8 and M/s. Precaution Properties Pvt. Ltd./Respondent No. 11 only subsequently submitted their proposals);

e. This being the case, in accordance with the settled law laid down by this Court, there was no question of the Respondent Nos. 6 to 8's proposals being considered till such time as the Petitioner No. 1's prior submitted proposal was considered and disposed of;

f. The fact that Respondent Nos. 2 and 5 did not follow the necessary procedure while accepting the Petitioner No. 1's proposal viz. demand and accept the scrutiny fee and assign a computerised number to the proposal cannot be held against the Petitioner No. 1;

66. Mr. Chinoy submits that the Respondent Nos. 2, 3 and 5 have acted unreasonably in holding that the Petitioners' said proposal was not valid. This is evident from the fact that since 30.07.2004 all statutory authorities have treated the proposal as being valid and the same was under consideration from time to time including at the highest level of Chief Minister, as shown from the various Minutes of Meetings annexed hereto. The Petitioner's proposal was in fact acted upon and remained in active consideration at all material times. The said order is thus perverse. The Petitioners were deliberately misled into believing that the contents of the "Minutes of the Decision" provided to Petitioners in March 2010 was the only relevant order passed on 20.2.2010.

67. Mr. Chinoy submits that the manner in which the Petitioners were so misled makes it evident that extraneous considerations have been taken into account by the Respondent No. 5, which vitiates the impugned order dated 20.2.2010. Mr. Chinoy, therefore, submits that the impugned Orders dated 20.1.2012 passed by the Respondent No. 2 are illegal and unreasonable as they altogether fail to take into account that the Petitioner No. 1's proposal is first in time for CTS Nos. 599, 651, 658 of BBR-VL This being the case till such time as the Petitioners said proposal is considered and disposed of, no other proposals including those of Respondent Nos. 6 to 8 or of M/s. Precaution Construction cannot and could not legally be considered and or found to be proper and complete and/or implemented.

68. Mr. Chinoy then submits that the Affidavit now filed by the HPC on 25.06.2012 and the version therein cannot be accepted. Attention of this Court is invited by Mr. Chinoy to the Petitioners' Affidavit in Rejoinder, namely, Affidavit of Vikram Mittal dated 31.08.2012.

69. Mr. Chinoy submits that the Petitioners were not aware and/or informed that the decisions of the HPC were uploaded on the Respondent No. 2's website. No details or particulars from which one can ascertain as to how and when the impugned order dated 20.02.2010 was uploaded onto website. If the HPC comprises of persons of higher stature and acumen from various public departments to deal with matters involving high stakes which have direct impact on the development of the city, then, they have not acted in a manner so as to fulfill the object and purpose of setting up this Committee. In these circumstances it is submitted that when the hearing was held and the decision

was pronounced as recorded in the minutes of order dated 20.02.2010, then, how the minutes of order dated 20.02.2010 superseded the earlier minutes of order dated 28.01.2010. Thus, this is a clear attempt to alter the final order of statutory body like the HPC which is deciding the contested issues and dealing with the rights of parties. It performs public function and duty, therefore, must abide by the rule of law. For these reasons, the impugned orders are vitiated by unfairness, unreasonableness, arbitrariness and can safely be termed as high handed. Therefore, the Writ Petition be allowed.

70. The statutory functionary, namely, HPC has filed an affidavit in reply to the Writ Petition and Mr. Bhalchandra Thakare, Secretary of HPC, states in this affidavit as under:--

2. I say that one Manav Seva Samiti Cooperative Housing Society (Proposed) had filed an application before High Power Committee (hereinafter referred to as HPC) making a grievance that Respondent No. 5 SRA was not taking action on the proposal submitted on their behalf u/s 33(10). I say that the Petitioners had also filed three applications before High Power Committee viz. Application No. 1016 of 2009; 1173 of 2009; 1198 of 2009, making a prayer that the proposal of the Respondent Nos. 6 to 8 herein respectively should not be processed by the SRA. I say that all the four matters being relating to same plots of land, were taken up for hearing together by the High Power Committee on 28.01.2010. I say that after the arguments were over, the decision of the High Power Committee was recorded as Minutes of the Decision.

3. I say that the board of matters before the High Power Committee consists of several matters. High Power Committee assembles normally once in two weeks i.e. on working Saturday. Because of the time constraint, after the arguments were over, normally the High Power Committee, immediately recorded its decision, by way of Minutes of Decision. The detailed order was prepared within a few days thereafter and uploaded on the website of High Power Committee. The orders of High Power Committee are uploaded on the website of High Power Committee in pursuance of order of this Hon'ble High Court in Notice of Motion No. 126 of 2008 in Writ Petition No. 1326 of 2007.

4. I say that as mentioned above, the decision of High Power Committee in four matters was recorded by way of Minutes of Decision dated 28.01.2010. I say that in the said Minutes it has been specifically mentioned that the application stands dismissed, clearly meaning thereby that the Application No. 947 of 2009 along with other three applications of the Petitioner stand dismissed. In the very order it had been mentioned that a detailed order will follow. I say that before a detailed order could be prepared and uploaded on website, the Applicant in Application No. 947 of 2009 moved the High Power Committee for recalling/modifying the Minutes of the Decision dated 28.01.2010, in the aforementioned four applications. All the parties were heard including the Advocate for the Petitioners herein and after the arguments were over, the High Power Committee announced its decision of dismissing the applications. The decision was recorded

as Minutes of Decision at the same time i.e. on 20.02.2010. The Minutes of Decision dated 20.02.2010 clearly records that application stands dismissed. It clearly means that all the applications filed by the Petitioners were dismissed on 20.02.2010, and there is no merit in the contention of the Petitioners that the Minutes of Decision dated 20.02.2010 provided to the Petitioners, were deliberately misleading as the same conveyed that no order had been passed with regard to the validity of the Petitioners' proposal to the SRA and that the same were pending. I say that a bare perusal of the Minutes of Decision dated 28.01.2010 and 20.02.2010 would convey that all the four applications in which the said Minutes of Decisions were recorded, were dismissed. I say that it is true that the Petitioners had applied for certified copy of order in Application Nos. 1016 of 2009, 1173 of 2009 and 1198 of 2009. These Applications were received on 26.02.2009. I say that by that time however, the detailed order was not ready and therefore, again the concerned Clerk supplied the certified copy of the Minutes of Decision dated 20.02.2010 to the Petitioners on 02.03.2010.

5. I say that when the detailed order was ready and signed by all members of the High Power Committee present on the date of hearing i.e. on 20.02.2010, the detailed order was uploaded on the website of High Power Committee. I deny the contention of the Petitioners that the Minutes of Decision dated 20.02.2010 were misleading. I deny that the Petitioners were deliberately misled, into believing that the Minutes of the Decision provided to the Petitioners in March, 2010, was the only relevant order passed on 20.02.2010. I say that as noted above, all the applications were dismissed on 28.01.2010 which was recorded by Minutes of Decision in which it was mentioned that a detailed order will follow. On application for modification/recall, a fresh hearing took place. The Petitioners' Advocate was present and heard. The Roznama is annexed and marked as Exhibit 1. After the arguments were over, the decision of High Power Committee was announced which was recorded by way of Minutes of Decision dated 20.02.2010. It does not lie in the mouth of the Petitioners to now contend that from the Minutes of Decision dated 20.02.2010, the Petitioners carried an impression that no order had been passed with regard to the validity of their proposal to SRA, when the Minutes clearly mentioned about the dismissal of application which clearly meant dismissal of all the four applications as mentioned in the cause title.

6. I submit that the detailed order of the Minutes of Decision dated 20.02.2010 was prepared after 20.02.2010 but the same cannot be said to be a fresh order. The same is in consonance with the Minutes of Decision dated 20.02.2010 and it cannot be said that the said detailed order is contrary to the certified copy of the Minutes of Decision furnished to the Petitioners.

71. What is crucial for the purpose of this Writ Petition is the stand of the MMRDA and which is set out in their affidavit. In that affidavit which has been filed by Rahul N. Pande, Deputy Town Planner, SRA Cell of MMRDA (Respondent No. 3), while admitting the issuance of relevant Government notifications appointing the

MMRDA as Special Planning Authority, what has been stated is crucial for our purpose. In paragraphs 5, 6 and 7 of the said affidavit dated 31.10.2012, this is what is stated:--

5. I state that MMRDA was examining the proposal of construction of Metro Car Depot on the subject land. The matter was referred to the Consultant to examine the proposal. In view of this, MMRDA had informed the Petitioners to get Annexure-II from the Deputy Collector. However, thereafter MMRDA did not process the matter further and no approval was given. In the meeting held by Principal Secretary, Urban Development Department on 17th July, 2009, it was decided that all the papers concerning the Slum Rehabilitation Scheme submitted by the Petitioners should be forwarded to C.E.O. SRA. The Officer on Special Duty, SRA Cell, MMRDA, therefore vide his letter dated 8th September, 2009 forwarded the papers concerning the SRA Scheme submitted by the Petitioners to the CEO, Slum Rehabilitation Authority. The said letter is annexed to the petition at Exhibit QQQ. However, the CEO, SRA has returned back all the papers submitted on 08.09.2009 by MMRDA by its letter dated 02.06.2010 as per decision given in para No. 16 by High Power Committee.

6. I state that MMRDA as a Special Planning Authority had prepared a Development Plan. Though the proposal of using some of the area for Metro Depot was at some point of time contemplated, MMRDA would not carry out Metro Rail Project on the said land due to insufficiency of the land and CRZ issue. MMRDA, therefore, is not carrying out any project on the subject land. Under the premises, the function of MMRDA in respect of the said land is as a Special Planning Authority under the Maharashtra Regional Town Planning Act, 1966.

7. I say that no SRA Scheme of the Petitioner or anyone else has been considered and/or sanctioned by MMRDA on the said land. As MMRDA is not carrying out any project on the same land, MMRDA would not be discharging function of SRA in respect of Slum Rehabilitation Scheme. This was made clear in the joint meeting held on 18th July, 2009 with the Principal Secretary, Urban Development Department. As per the directions of the Principal Secretary, Urban Development Department, State of Maharashtra, MMRDA forwarded complete papers pertaining to the Slum Rehabilitation Scheme to C.E.O., SRA on 8th September, 2009. The work of ascertainment of eligibility and preparing Annexure-II is a part and parcel of the SRA Scheme. The SRA Scheme as submitted by the Petitioners or anyone else in respect of the said land, as well as joint measurements etc., pertains to the SRA Scheme and same would be considered by the Slum Rehabilitation Authority under the Slum Act. I state that as MMRDA is not carrying out any MUDP or MUIP project on the said land, MMRDA does not function as the Slum Rehabilitation Authority for the said scheme.

72. Upon perusal of these paragraphs it is evident to us that the stand of the MMRDA is that it is not carrying on any project on the subject land. No Slum Rehabilitation Scheme of the Petitioners or any one else has been considered and/

or sanctioned by the MMRDA on the said land. As the MMRDA is not carrying on any project on the said land, it would not be discharging the function of the Slum Rehabilitation Authority (SRA) in respect of the Slum Rehabilitation Scheme. While stating that the work of ascertainment of eligibility and preparing Annexure-II is a part and parcel of the Slum Rehabilitation Scheme, but the MMRDA is not carrying out any Mumbai Urban Transport Project (MUTP) or Mumbai Urban Infrastructure Project (MUTP) on the said land. The MMRDA does not function as Slum Rehabilitation Authority for the said scheme.

73. In our view, once the factual position emerging from the record is as above, then, the Petitioners cannot claim any right in their proposal being processed or granted. The MMRDA has clarified its position. Once the Petitioners are in picture only because the MMRDA was involved in an infrastructure project, then, they cannot claim that their proposal must be considered and accepted even if the project is given up by the MMRDA. We do not find any compulsion of this nature either in the statutory scheme or otherwise. It has been clarified to the Petitioners that their proposal has not been sanctioned. It has gone through several channels from time to time. From 2004 the Petitioners evinced their interest in the development project. That they took some preparatory steps of their own does not mean that the authorities were bound to accept their proposals. The Competent Authority never gave the Petitioners or others any commitment. It is clear that in 2008 the Petitioners were informed that no slum rehabilitation scheme had been sanctioned. Thus, the Petitioners have been pursuing the proposal or their scheme does not mean that any rights accrue in their favour. Ultimately, what infrastructural project should be taken up and implemented is a policy decision which is to be taken by me experts in the field. It is the State and its agencies or instrumentalities which take decisions of providing the infrastructure and taking up the projects for that purpose. It is not for the Court to pass any orders when the Authorities are not desirous of pursuing their infrastructure development projects or schemes. The decision of this nature depends upon several factors including the financial ramifications and repercussions. In these circumstances in the matters of planning and laying down infrastructure, unless the policy decision has been taken which can be termed as arbitrary or vitiated by mala fides, this Court cannot interfere in its writ jurisdiction.

74. The Petitioners in their affidavit in rejoinder may persist with their stand that all powers of the Slum Rehabilitation Authority are possessed by the MMRDA when it is executing any infrastructure project. However, that does not mean that the Court can take note of the Petitioners' grievance and compel the MMRDA either to take up the project or pursue the scheme of the Petitioners submitted to it. All such matters as are raised in the Affidavit in Rejoinder and the petition, could be said to be proposals and which were, at the relevant time, were being considered. However, the final position emerging from the record being that the MMRDA is no longer pursuing the infrastructure project and has clarified its stand in clearest terms, that is enough to show that it is not amenable to writ

jurisdiction in the facts and circumstances of this case. In these circumstances we cannot take note of the submissions of Mr. Chinoy or the arguments based on the Affidavit in Rejoinder. Equally, we cannot take note of further affidavits filed by the State.

75. We cannot accede to the submissions of the Petitioners that the MMRDA has made false statements and has changed its stand because it has succumbed to the pressure of private developers. Once the Petitioners submit that the MMRDA came into picture in relation to an infrastructure project on the subject lands and it is deemed to be the Slum Rehabilitation Authority for such scheme, but the project is abandoned by the MMRDA, then, we do not see how the Petitioners can urge as above and particularly when the MMRDA does not dispute the position emerging from the applicability of Section 17 of the MMRDA Act. It is not, therefore, possible for us to agree with the Petitioners' submissions on this point.

76. Then comes the issue as to whether there is anything in the proceedings of the High Power Committee which could be termed as suspicious or doubtful and whether its orders can be said to be perverse.

77. What we have noted is that the High Power Committee met on 28.01.2010. It heard the Advocates for Manav Seva Samiti Co-operative Housing Society (proposed) and the present Petitioners. What the High Power Committee observed is that the Applicant in Application No. 1016/2009 has submitted the proposal to the MMRDA, under Regulation No. 33(10) of the Development Control Regulations, which was referred to the Slum Rehabilitation Authority for further processing. In the meantime, other two proposals were taken on record by the Slum Rehabilitation Authority. The Slum Rehabilitation Authority is yet to take any decision of processing one application out of three proposals. Hence, there is no cause of action and the application was, therefore, dismissed. This was the decision on Application No. 947/2009 along with other applications.

78. What the Petitioners requested to the High Power Committee by its letter dated 22.02.2010 is that it should be supplied a copy of the minutes of the High Power Committee meetings held on 28.01.2010 and 20.02.2010. That was supplied and what we have noted is that on 20.02.2010 the matter was taken up on the request of Manav Seva Samiti Co-operative Housing Society (Proposed). All parties including the present Petitioners were present as is clear from the minutes. The minutes were modified so as to note the factual position, namely, that the Petitioner No. 1 who is the Applicant No. 1 in application No. 1016/2009 submitted the proposed Urban Renewal Development under MUIP of MMRDA for Infrastructure Projects on the land situate at Block VI, BBR Scheme of MMRDA at Cuffe Parade, Colaba, Mumbai. That was referred to the Slum Rehabilitation Authority for further needful vide letter dated 08.09.2009 by the MMRDA. In the meantime, another three proposals were taken on record by the Slum Rehabilitation Authority, namely, Shreelekha Enterprises, Sneha Developers and Manav Seva Samiti. Beyond this factual position being noted and taken on record, there is no modification of the decision of the High Power Committee

taken on 28.01.2010. The conclusion is recorded in the minutes dated 28.01.2010 and modification thereto on 20.02.2010 does not alter the final decision of the HPC. There is no modification thereof.

79. On what basis the Petitioners fault the functioning of the High Power Committee and the manner in which the minutes are recorded is not clear to us. Rather acting on this factual position, these very Petitioners addressed letters to the Chief Executive Officer of Slum Rehabilitation Authority as is clear from pages 467, 468 and 469 of the paper book. It further appears that the Slum Rehabilitation Authority has addressed a communication dated 18.02.2011 to various entities who had submitted their proposals. In the above circumstances and when even this communication is annexed by the Petitioners in the present Writ Petition, then, we do not see how they can make a grievance. The grievance raised is based on information sought under the Right to Information Act, 2005 by addressing an application dated 19.01.2012.

80. However, when we have the reasoned order of the High Power Committee before us at page 473 of the paper book, what we find is that there is reference made to the applications forwarded by the Petitioners, Manav Seva Samiti and the applications that were filed by the Petitioners seeking approval to their Slum Rehabilitation Scheme. The Advocates were heard and the High Power Committee concluded in paragraphs 16, 17, 18 (wrongly numbered as 19) and 19 as under:--

16. Considering the aforesaid facts and after perusing the record this Committee is of the view that the applicant viz. M/s. Plymouth Construction has not submitted any proposal to MMRDA or SRA in accordance with the procedure prescribed by SRA. Merely because the said M/s. Plymouth Construction by its letter dated 30.07.2004 with certain documents addressed a letter to MMRDA and the said letter was referred by MMRDA to SRA it does not become a valid proposal. Therefore the applicant M/s. Plymouth Construction are not entitled to any relief in the present proceedings as there is no cause of action has arisen for M/s. Plymouth Construction to approach this Committee. This Committee, therefore, is of the view that SRA shall return all the papers received from MMRDA.

17. Further it is seen from the record that the slum dwellers residing on the subject plot of land have formed 3 different societies and appointed their respective Developers who have submitted their proposals to SRA and the said different proposals have been accepted by SRA which has given three separate computerized proposal numbers to the said 3 societies and their Developers and also accepted LOI, Scrutiny Fees. The aforesaid three proposals are separate proposals on three separate proposals on three different slum pockets, hence as observed by the Hon'ble High Court, Bombay vide their order dated 26.04.2006 passed in W.P. No. 2746 of 2005 : (2006 (5) AIR Bom R 3) (Awadesh V. Tiwari and others v. CEO, SRA and others), the SRA has to process the said proposals submitted first in point of time to its logical conclusion. Therefore, SRA cannot

accept any proposal on such three slum pockets or any part thereof viz. Shreelekha Enterprises, Sneha Developers, Manav Seva Samiti, thus the request of the applicant M/s. Plymouth Construction to reject the three proposals can not be accepted and granted by this Committee.

18. The applicant in Application No. 1016/2009 has submitted that their letter regarding Urban Renewal Development under MUIP at MMRDA for infrastructure projects on land situated at Block VI, BBR Scheme of MMRDA at Cuffe Parade, Colaba, Mumbai was referred to SRA for further needful vide letter dated 08th September, 2009 by MMRDA. The Committee has observed that in the meantime another three proposals are taken on record by SRA viz. Shreelekha Enterprises, Sneha Developers, Manav Seva Samiti. The SRA is yet to take the decision of processing the three proposals on three different slum pockets in accordance with the procedure. Hence as on today, there is no cause of action for the Applicant M/s. Plymouth Construction to approach this Committee.

19. In view of the aforesaid facts the present Application filed by the Applicant M/s. Plymouth Construction stands dismissed accordingly.

81. We do not find there is any diversion in the views or the conclusions have been modified deliberately as contended by the Petitioners. We are satisfied that the affidavit filed by the High Power Committee in this case reflects the correct position and emerging from the record. We, therefore, do not find the challenge to the order passed by the High Power Committee is valid or well founded. Once the stand of the MMRDA is clarified, then, all the more we cannot interfere with the decision of the High Power Committee which even otherwise is in consonance with the factual material placed on record. We do not find any error or perversity therein requiring our interference under Article 226 of the Constitution of India. We are of the view that the detailed order is in consonance with the minutes. The Petitioners may quarrel with the finding recorded that there is no valid proposal submitted by them. However, even if it can be said to be erroneous, yet the fact remains that the Petitioners' proposal was not processed beyond a point and in the meanwhile, the SRA had different proposals before it. However, once the MMRDA has indicated that it is no longer undertaking any infrastructure project on the land, then; all other aspects are purely academic. Therefore, there is nothing doubtful or suspicious about the proceedings or the manner in which they were recorded or ultimate order of the High Power Committee in this case. As a result of the above discussion, there is no merit in the Writ Petition. It fails and is dismissed. Ad interim order to continue till 19.09.2013.