

(2005) 11 BOM CK 0034

In the Bombay High Court

Case No : Public Interest Litigation No. 43 of 2005

Public Concern for Governance Trust Charitable

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 23-11-2005

Acts Referred:

Bangalore Development Authority Act, 1976 — Section 38
CIDCO (Lease of Land to Co-operative Housing Society) Regulations, 1995 — Regulation 4
Contract Act, 1872 — Section 23
Maharashtra Regional and Town Planning Act, 1966 — Section 118, 159
Maharashtra Regional and Town Planning Rules — Rule 1, 10, 11, 12, 13

Citation : (2005) 11 BOM CK 0034

Hon'ble Judges : Roshan Dalvi, J;H.L. Gokhale, J

Bench : Division Bench

Advocate : C.U. Singh, Soma Singh and Mahesh Londe, instructed by Sanjay Udeshi and Co, for the Appellant; Ravi Kadam, General and P.I. Khemani, A.G.P. for Respondent No. 1, G.S. Hegde and Lokesh for Respondent No. 2, A.A. Garge, for Respondent No. 3, Janak Dwarkadas P.K. Shroff, Subodh Joshi, Hetal Savla and Radhika A. Pinzara, instructed by Parimal K. Shroff and Co. for Respondent No. 4 and V.A. Thorat and Preeti Shah, for the Respondent

Judgement

This Judgment has been overruled by : State of Maharashtra Vs. Public Concern for Governance Trust and Others, (2007) 1 SCALE 72 : (2007) 3 SCC 587 : (2007) 2 SCR 87 : (2007) AIRSCW 474 : (2007) 1 Supreme 8

H.L. Gokhale, J.—The Petitioner is a Registered Trust which has filed this Public Interest Litigation in respect of the allotment of residential plots in Navi Mumbai Municipal Area by Respondent No. 2 - City and Industrial Development Corporation. CIDCO is the Authority constituted by Respondent No. 1 State of Maharashtra under the Maharashtra Regional and Town Planning Act, 1966 (MRTP Act) for development of Navi Mumbai amongst other townships. The Petitioner trust is created to promote respect for law and transparency and accountability in governance amongst other objectives. It is founded and led by eminent

citizens which include Mr. B.G. Deshmukh, former Cabinet Secretary, Mr. J.F. Rebeiro, former Director General of Police and Dr. R.K. Anand, an eminent physician with Jaslok Hospital. The principal submission of the Petitioner trust is that although the relevant scheme of CIDCO is for the benefit of genuine housing societies, the plots thereunder are grabbed by builders in the name of fictitious societies. Prayer (a) of this petition therefore seeks to quash and set aside these allotments. The 1st Respondent to the petition is State of Maharashtra through the Urban Development Department. Respondent No. 3 is the Navi Mumbai Municipal Corporation (NMMC). Respondent No. 4 is the concerned builder and Respondents Nos. 5 to 9 are the concerned housing societies.

2. Respondent No. 2 - CIDCO grants plots in Navi Mumbai for construction and development under the MRTP Act read with the prevalent Development Control Regulations for Navi Mumbai, and City and Industrial Development Corporation of Maharashtra Limited (Lease of Land To Co-operative Housing Society) Regulations, 1995 (hereinafter called "the Regulations") as amended in 1999. The applicability of the MRTP Act and the Regulations to the disputed allotments are admitted. The respective contentions of the parties are with respect to the interpretation of the Act, the Regulations, the resolutions passed by the Board of Directors of CIDCO and their application and implementation in the instant case.

3. The petition points out that the allotment of plots is done by CIDCO by either of the three methods:-

- (1) Public advertisements.
- (2) At a fixed price to Co-operative Housing Societies.
- (3) On individual applications.

It is their case that plots which are granted by public advertisements are to be granted upon tenders being invited in which the builders apply. Since the prices of those plots are regulated and governed by Market forces, they tend to be steep. The genuine Co-operative Housing Societies which require plots for their members cannot compete with them. The Societies are therefore required to be granted plots at a fixed concessional rate. This grant of plots at a fixed rate or fixed price is therefore, meant to be given only to genuine and needy Co-operative Housing Societies and therefore, necessarily only for residential purposes. This construction is permitted at Floor Space Index 1 (FSI 1). It is the case of the Petitioners that CIDCO sought to grant the concerned plots ostensibly to such needy and genuine Co-operative Housing Societies. It therefore, sought to grant them at a fixed rate calculated by itself as the base price with specified enhancement thereon. However, upon such price being computed, ascertained and fixed, instead of granting those plots to genuine and needy Co-operative Housing Societies, CIDCO allowed those plots to be frittered away to builders and developers who took them not upon any tender, but at the fixed price by floating, bogus and fake Co-operative Housing Societies consisting of their employees, nominees and friends instead. The Petitioners submit that thus on the one hand

CIDCO deprived itself of the market rate of the plots which would have been determined by economies in the market, based upon the demand and supply principle, and on the other hand, the plots were cornered by builders who would make huge profits upon the development of the plots and consequently no genuine or needy Housing Society could take or develop them at the price fixed mainly and only for them. Further they contend that though those plots were to be only for residential purposes with FSI 1, the builders who captured them took those plots for both commercial and residential purposes (C + R) in the Sectors reserved for C + R though ostensibly in the names of Cooperative Societies. The Builders accordingly sought to convert those plots partly for commercial use with FSI 1.5 on the ground of they being in Sector C+R.

4. The Petitioner's case thus shows that there was a dual advantage and unjust enrichment for the builders and a corresponding disadvantage to CIDCO, the public sector undertaking and consequently to the citizens at large. Consequently the builders got a plot at the fixed rate meant for societies with FSI 1 and also availed the C+R development without subjecting themselves to the requirements of a tender meant for C+R plots to be given by public advertisements to builders.

5. The Petitioners have shown this exercise by CIDCO under the aforesaid Regulations (which shall be referred to presently) based upon two resolutions of its Board of Directors Nos. 8848 and 8886 passed on 23rd October 2003 and 25th November 2003 respectively based upon their respective Agenda Notes which show the exercise of computing the fixed rate upon demand stated to have been received by CIDCO from various Societies for residential purposes. The Agenda Notes and the 2 resolutions make interesting reading.

The relevant resolutions of CIDCO governing the field:

6. The Agenda Note for resolution number 8848 dated 23rd October 2003 shows that as per the Land Pricing and Disposal Policy of CIDCO the plots for Co-operative Housing Societies were to be allotted by one of the 3 aforesaid modes. The Agenda Note gives the justification for grant of plots at fixed rate as "tremendous demand" from Promoters of Cooperative Housing Societies for allotment of plots to them without tender and at fixed rates in various nodes of Navi Mumbai. The Agenda Note sets out the proposal for CIDCO to offer plots for residential use at fixed rate to such societies. It further sets out that the market analysis done by CIDCO shows that those Societies found it impossible to get a plot through tender. Consequently, the Agenda Note shows that it was proposed to determine a fixed price at which the plots will be given out to Co-operative Housing Societies. First, a base price is arrived at on the basis of the existing pricing policy and then there would be 40% enhancement of the base rate in the developed nodes. (similarly there was to be 30% increase in the base rate for determining the fixed price in developing and new Nodes, but with which this Petition is directly not concerned.). The Agenda therefore sets out a table showing the base price under CIDCO's existing pricing policy and the enhanced price at the above percentage. The table further shows the price concession that

these plots will still get, in terms of percentage when compared to, the tender rate. This is the weighted average of such tender. Since market forces would determine the tender price, the concession received would therefore be lesser in the developed nodes and more in the developing or new nodes.

7. Though the Petitioners have made a grievance about the number of plots and claimed reliefs for all such similarly placed plots in the Petition, they have concentrated their criticism on one prime plot by way of an illustration. The plot specified by the Petitioner (the said plot) is not only in a developed node but in a prime locality of Navi Mumbai nicknamed "Marine Drive of Navi Mumbai" by CIDCO.

8. The said plot is in Nerul area of Navi Mumbai and is shown at serial No. 5 in the table which forms a part of the Agenda Note to the Board Resolution No. 8848 of CIDCO. The base price as per the existing pricing policy of CIDCO for the said plot is shown to be Rs. 7188/- per square meter. The proposed increase in base price (enhanced by 40% being in the developed node) is shown to be Rs. 10063/-. The weighted average of Tender rate is shown to be Rs. 10743/-. Since this is a prime plot in a developed area analogous to Marine Drive of Mumbai, the actual tender rate would be therefore, far higher than the average of tender rate, the average having been derived for developing as well as developed plots together. It is the case of the Petitioners in para 14 of the Petition that the base price fixed was far below the prevailing market rate and that the prevailing market rate would be about Rs. 20,000/- per square meter instead. That would be near about the highest price of the plots to be developed in Navi Mumbai. Of course this rate would be when the plot is fully developed in that "developed node", Nerul. The Agenda shows that the lower rates were justified considering the fillip it would give to speedier development in Navi Mumbai and to enable genuine Housing Societies to take them instead of resorting to the practice of allotting plots to developers only. The laudable purpose of the policy, stated in the Agenda is "in keeping with the National Policy to increase Housing Stock of Individuals".

9. Based upon that Agenda, CIDCO passed its resolution No. 8848 of 23rd October, 2003 which resolved that CIDCO approved the proposal to fix the rates for plots to be allotted to Co-operative Housing Societies with FSI 1 and purely for residential purposes without inviting tenders at a fixed rate as mentioned in column No. 5 of the table to the Agenda. It further passed the resolution that this policy was to be implemented only after verifying the genuineness of the Society.

10. Thus, four characteristic facts of the grant by CIDCO emerge from that resolution:

- (i) The grant would be only to genuine Co-operative Housing Societies.
- (ii) It would be only for residential purpose.

(iii) It would be without inviting tenders and instead at the fixed rate.

(iv) It would be for FSI 1.

11. It must be appreciated that fixed rates were therefore meant only for genuine Co-operative Housing Societies applying directly for the plots. It would be only for residential purposes and would have FSI 1. The other plots would be granted through tender. They would not be at the fixed rate since such rates would be dependent upon the market forces. Those plots would not be only for residential purposes - they would be C+R. They would therefore enjoy not 1.00 but 1.5 FSI. The advantages of constructing C+R would be that it will attract 1.5 FSI which would therefore necessarily get higher profit. It would therefore, fall within domain of the business of developers and would fetch CIDCO the gains of such development. The plots under CIDCO's new policy pursuant to resolution No. 8848 would derive comparatively lesser benefit for CIDCO in as much as the plots would be granted upon the fixed rate but they will be available for residential purpose only and to genuine housing societies alone.

12. The case of the Petitioner is that these plots have been granted by CIDCO to Respondents 5 to 10 conferring the advantages of the policy upon those Respondents and at a disadvantage to CIDCO. However, though the price was fixed for the grant of the plots, ultimately what is seen is that they were given away not to genuine Co-operative Housing Societies and not only for residential purpose for FSI 1, but to builders for C+R attracting FSI 1.5 and without the stringency of a tender.

13. Under the further Agenda Note for a subsequent Board Resolution No. 8886 of CIDCO passed on 25th November 2003, CIDCO sought to regulate the actual grants made to the Co-operative Housing Societies for whom the earlier resolution was passed on 23rd October 2003. That Agenda again shows the object of the resolution to be of "enabling and assisting the needy and genuine Cooperative Housing Societies to acquire a plot only after verifying genuineness of the Society, in Navi Mumbai".

14. The above referred regulations specified the norms to verify the genuineness of such Societies. The Agenda provided the requirement of an affidavit (a truthful statement on oath) showing the continuous residence of 15 years of the applicant in Maharashtra State supported by documentary evidence such as ration card, passport, Domicile Certificate etc. of each member coupled with the certification in an affidavit that that member has no "other dwelling unit in Navi Mumbai".

15. The Agenda further sets out the maximum extent of the area of the flat, the number of members of the society, the area of the plot and the conditions to regulate the change of members. Initially the number of members not allowed a change was 1/3 of the total members and the period of such restriction was 5 years as shown in the Agenda Note for the Board Resolution. In the resolution, 1/3 has plummeted to 1/4 of the total number of members and the 5 year period

in the Note has been decreased to 3 years from the date of allotment.

16. The two resolutions read together show the Board of CIDCO having decided to allot residential plots with 1 FSI at fixed rate to genuine Societies whose members would be verified by a statement on oath supported by documentary evidence to substantiate those statements, part of whom shall not transfer their memberships for a specified period.

17. It may be mentioned that though the suit plot at Nerul found its ultimate place as a plot with a fixed price, about a year prior thereto, it was sought to be allotted by public advertisements which implied the allotment by tender. Such public advertisements were given in August- September, 2002 in 2 English and 2 Marathi News-papers. The advertisements of CIDCO show Navi Mumbai's Marine Drive with a base price of Rs. 10,000/- per sq. mtr. The advertisements gave a "life time opportunity to top most builders of India". They published the names of authorities and the contact number and address of CIDCO. We are told that no offers were received by CIDCO consequent upon the said advertisements. The base price shows the minimum price below which CIDCO would not and could not have allotted the plot to any of the topmost builders of India. That same plot (the suit plot) has however been subsequently offered under the Board Resolution No. 8848 at the flat fixed rate of Rs. 10063/- not to any of "the top most builders of India" but to "genuine Co-operative Housing Societies".

18. The petition contends that although ostensibly CIDCO sought to target a separate market for allotment of interalia the suit plot, instead of the ultimate allotment to genuine societies, there has been a volte-face as the suit plot came to be taken for development by one of the top most builders of India, Respondent No. 4 instead of any genuine Co-operative Housing Societies.

19. The Petitioners have drawn our attention to the website print out of Respondent No. 4 showing interalia that the suit plot is its premier residential construction annexed at Exhibit-F to the Petition.

20. On paper however 6 Societies being Respondent Nos. 5 to 10 have applied for and been allotted one plot each at the fixed price from CIDCO. According to the Petitioners, these societies are not genuine housing societies.

The applications of the disputed societies for allotment of land:

21. To appreciate this submission, one will have to examine the documentary evidence of the offer by Respondents 5 to 10 and the acceptance by CIDCO constituting the contract of allotment between them. The documents containing the particulars of the members of these societies will also have to be seen to examine whether they fulfill the criteria laid down. This will enable us to examine the genuineness of these societies.

22. These documents have come to be referred and relied upon by the Petitioners in a further Affidavit filed by the Petitioner's Trustees, consequent upon inspection of the documents taken by the Petitioners from CIDCO. CIDCO

has produced the files containing the applications, affidavits and documents furnished by the members of these societies.

23. When we look into these documents, what we find is that the letters of application titled "Request for Allotment" by Respondents Nos. 5 to 9 Societies are computer print-outs. All the letters are undated. All of them are addressed to the then Chief Minister of Maharashtra Shri Sushilkumar Shinde and not to CIDCO which as a statutory Corporation, is a separate competent legal entity. Each of them bears the endorsement of the Chief Minister "Please put up" dated 21st February 2004. Each of them has been received by the Registered Office of CIDCO at Nirmal Building, Nariman Point, Mumbai on 24th February 2004 and in the Commercial Section of CIDCO at Navi Mumbai on 25th February 2004. The 2 stamps of these Offices bear 5 different running inward numbers. The inward numbers of the stamp of the CIDCO Office at Nirmal are 15 onwards marked "C.M.". The endorsement of the then Managing Director of CIDCO Shri V.M. Lal "Please process early" is made on 24th February 2004 itself, before the letters are moved to the Commercial Section at Navi Mumbai. A further endorsement also dated 24th February 2004 on the top of these letters shows them serially numbered from No. 30 onwards and bearing the endorsement "VVIP". After these, three identical endorsement have been made by the Commercial Section of CIDCO at Navi Mumbai under separate inward numbers commencing from No. 3768 on 25th February 2004.

24. Surprisingly, the copies of letters produced by Respondent No. 6 (the lead society) on behalf of Respondent Nos. 5 to 10 in Court show that they were received by CIDCO on 26th February 2004 after all such action was already taken.

25. Though the names of the Societies and their addresses are different, none of the letters bear any telephone number of the Society as also the date. The font of the letter-head in the printout are similar for 4 Societies. The subject of the letter is identical except for the Sub-Division of the plot mentioned therein. All the letters show Plot No. 24 in the print out. (Indeed the Development Plan of CIDCO dated 9th January 2004 which is C+R shows the said plot bearing No. 24!). They further show handwritten subplots A to E. Hence at the time of the application itself the specific sub-plot to be allotted is specified by the author of the letter who is the Chief Promoter of that Society. The contents of each of these letters is identical. Their addresses are from different parts of the city. Thus, "Sealink's" address is Matunga, Mumbai-19, Sagarika's - Ambedkar Road, Mumbai-14; Amey's - Manektala Estate, Mumbai-86 and others from Vashi. It is seen that Co-operative Housing Societies stated to be having different names and different addresses in far off areas have all sought to apply for allotment by writing identical letters on the same day not to CIDCO but to the then Chief Minister of Maharashtra. For some unknown reason all these letters are directed to be put up and processed early on the date they were received and marked "VVIP".

26. The applications show no annexures. In fact the contents of the letters show

that the annexures had been earlier or separately submitted. Copies of any such annexures, not being with the letters, they were not even offered for inspection by CIDCO to the Petitioner's representatives.

27. The application of Respondent No. 10 has been made separately. It is also undated. It is received initially on 5th April 2004 and bears endorsement of the Chief Minister dated 5th April 2004 "Please Process and Pass by 12 th April 2004" . It is received by the Nirmal Building of CIDCO on 6th April 2004 under No. 42 CM. It bears the further stamp of VVIP, No. 75 against the date 8th April 2004. The endorsement of then Managing Director of CIDCO was made on 12th April 2004.

28. The note of the Marketing Manager dated 16th March 2004 with regard to each of these letters is identically made for each of these applications showing that the applications were received along with enclosures which were duly certified and that the Societies have fulfilled all the terms and conditions with regard to the number of members and the extent of the area of the plot and the flats. Neither the then Chief Minister nor the Marketing Manager nor the Managing Director of CIDCO are seen to have made any query in spite of this astonishing similarity of approach of these six societies coming from different parts of the city. Strangely enough, their response to these identical applications is also astonishingly identical.

Documents in support tendered by members and total absence of scrutiny:

29. CIDCO claims to have scrutinised and verified the applications of these Respondents. Upon our query CIDCO has produced 6 files containing the documents of all the members of the 6 Societies. A cursory look at these files has revealed not only that CIDCO has not scrutinised or verified the documents, but that when seen, those documents go against the basic elementary requirements for application by members as per the Regulations and shown in the Agenda to the Board Resolution in terms of which resolution No. 8886 came to be passed by the CIDCO on 25th November 2003.

30. It would be essential to enumerate some of the salient features of those documents. It may be remembered that these documents were required as per the Agenda to the aforesaid Board Resolution in support of the affidavits to be made by the members that they lived in Maharashtra for 15 years and that they do not have another dwelling unit in Navi Mumbai. In support of that statement on oath the documents of the members are produced by them, supposedly scrutinised by CIDCO and have been appreciated by us.

31. Most of the members have annexed photocopies of their Ration-cards, many of which are unreadable. The ration-cards are issued in many of the cases after the year 2000. They show the address of many of the members to be at or near Durgamata Mandir or Shiv Mandir or at Turbhe Stores in Navi Mumbai. Incidentally several of these addresses are in Navi Mumbai itself. The dwelling unit shown in ration-card is therefore in Navi Mumbai itself. The affidavits of

those members making a statement on oath that they have no dwelling unit in Navi Mumbai is contradicted by their own documents. Aside from the ration-card no other document showing the residence at any other place in Maharashtra prior to the date of the issue of ration-card is produced. The statement on oath relating to continuous stay of 15 years in Maharashtra is therefore not supported by most of the members by documentary evidence as required by the Regulations and specified in the Agenda Note. Almost no member has produced or annexed his Passport. Many of the applications are bearing thumb impressions. Most of the members have annual income of their entire family of about Rs. 20,000/-. Several of the addresses are in chawls or hutment colonies in the far suburbs of Mumbai. These are the persons who are shown to be members of the aforesaid 6 societies who applied through their Chief Promoter. They have applied for development of the plot on which a building has to be constructed in the area suitably nicknamed Navi Mumbai's Marine Drive. These members are shown eligible to obtain a flat admeasuring about 1000 sq. ft in a sky-scraper to be constructed on the plot allotted by CIDCO with amenities like jogging track, golf course, terrace garden, swimming pool, complete with an amphitheater. This is on the backdrop that the cost of each flat is not expected to be less than Rs. 25 lakhs.

32. Thus, as an illustration, if we see the file of Respondent No. 5 - Sea Queen Society, first there is an undated letter on its letterhead having its address at 1/3 Vishwas, L.T. Road, Bombay-92. It is addressed to Shri Sushil Kumar Shinde, Chief Minister of Maharashtra asking for allotment of Plot No. 24B, Sector 4 at Nerul. It is signed by one Mansukhlal Nagji Gangar in Gujarati. Then there is a sketch plan from CIDCO's Planning Department showing the residential plots in Sector 4 and 6, Nerul. Thereafter appears on one page an extract of two resolutions supposed to be passed by the Extraordinary General Meeting of this Society at Navi Mumbai on 20th January 2004. It records that Mansukhlal Nagji is elected as the Chief Promoter and then he is authorised to do the needful in the matter of allotment of plot, execution of agreement, opening of bank account, etc. The first resolution is proposed by M.R. Satra and seconded by A.P. Bheda. The second resolution is proposed by J.V. Satra and seconded by N.G. Gala. At the bottom appears a signature of Mansukhlal Nagji to certify it as the true extract.

33. Then there is a list of members containing 51 names beginning with Gangar Mansukhlal Nagji and ending with Myatha Shila Samuel. Thereafter appears applications of each of these members with their attested photographs. The application has 7 columns.

1. Member's full name
2. Name of the society
3. Member's residential address
4. Member's age

5. Whether he or his family member owns any apartment/plot in Navi Mumbai

6. If so, details of it

7. Whether staying in Maharashtra for 15 years.

This application is followed by a photocopy of an extract of his ration card and an affidavit, amongst others showing his income. This last affidavit is made by hardly anybody.

34. Now, from this list of 51 of Respondent No. 5 - Sea Queen Society, if we check the first 26, i.e. more than 50% of the applicants, the picture emerges as follows:-

S.No Name of the Member Date of issuance Address Signed in Income of ration card which language p.m. 1. Gangar Mansukhlal Nagji Unreadable Sector 14, Vashi, Rs.18,000 Gujarati 2. Shrimant Sakharam Gaikwad 16-8-2000 Near Turbhe Stores, Navi Mumbai Thumb No particulars 3. Mahadevi Sopan Ghanate 17-1-2000 Near Durga Mandir, Navi Mumbai Marathi No particulars

4. Aleshkumar Ramu Madheshiya 10-4-2000 Near Turbhe Stores Hindi No particulars 5. Nilappa Mahadev Talekar 7-8-1987 Near Turbhe Stores Thumb No particulars 6. Sanju Sakharam Gaikwad 16-8-2002 Near Turbhe Stores Marathi No particulars 7. Vijay Baliram Satpute 6-10-1995 Near Turbhe Stores Marathi No particulars 8. Satra Jitendra Velji 21-1-1989 Chinchpokli English Rs.10,900 p.m. 9. Sanjay Madhukar Shinde 15-7-1999 Near Turbhe Stores English Not provided 10. Mahadev Dattaram Tawade 4-12-1989 Dharavi English Not provided 11. Miss Khyerunniss A. Sultan Not annexed Nerul English Not provided 12. Ashok Pirappa Shinde 29-4-2001 Near Turbhe Stores English Not provided 13. Namwar Hariprasad Gupta 13-7-2001 Near Turbhe Stores English Not provided 14. Ramesh Audut Joshi 8-10-1992 Near Turbhe Stores English Not provided 15. Bhaleram Sunildutt 19-8-2003 Hanuman Nagar Pandurang English Not provided 16. Padtare Kashibai Suhadev 29-12-1989 Near Turbhe Stores Thumb Not provided 17. Yuvaraj Dhanraj Kamble 4-3-1993 Bhiwandi English Not provided 18. Sidhiling Basappa Shinde None Solapur English Not provided 19. Gangadhar Laxman Loke 25-8-1993 Worli Marathi Not provided 20. Parshuram Narayan Bane 15-6-1983 Worli English Not provided 21. Kulkarni Baburao Nagappa 5-1-1993 Sector 18, Vashi English Rs.14,600 22. Khairnar Vishwas Dattatray None Soparole Village English None 23. Ashok Manohar Sapkal 30-10-1993 Soparole Village English None 24. Balkrushna Sahadev Hirlekar 9-7-1970 Keni Road Marathi None 25. Suresh Jagganath Tankkar 19-7-1985 Andheri Marathi Rs.11,850 26. Shivdas Lotan Fulpagar 13-1-1987 Bhiva Patil Chawl, Dharivali Marathi Rs.12,000 35. The application for the society is supposed to be received by the Chief Minister in February 2004. Thus, the persons have to be residing in Maharashtra prior to February 1989. Out of these 26 ration cards, only 7 are prior thereto. Out of them also, only three have disclosed some income, i.e. S. No. 8 - Satra Jitendra Velji (Rs.10,900/- p.m.), S. No. 25 - Suresh Jagannath Tankkar (Rs.11,850/-

p.m.) and S. No. 26 - Shivdas Lotan Fulpagar (Rs.12,000/- p.m.).

36. We have scrutinised all the six files. The Petitioners have placed on record the photocopies of all relevant papers including the list of members and their applications etc. The pictures emerging in all of them is practically similar, if not identical. The Chief Promoters of all these six societies and their income per month as per their affidavits made at the time of their initial applications are as follows:-

S.No Name of the Society Name of the Chief Promoter Monthly Income 1. Sea Queen Mansukhlal Nagji Gangar Rs.18,000/- 2. Amey D.S. Shinde Rs.12,350/- 3. Sagarika Rasiklal Nagji Satra Rs.20,000/- 4. Sea Link Mayur Rasiklal Satra Rs.14,500/- 5. Sea View Anil Shantilal Mehta Rs.12,000/- 6. Vinayak Damji Kunwarji Gala About Rs.20,000/- (since it is stated to be Rs.2,50,000 per year)

Most of their members have not disclosed any income and from the prima facie scrutiny of ration cards, hardly 25% of the applicants are seen to have been issued ration cards prior to 15 years. Their dwelling houses are situated in some hutment colony without any precise particulars since the address given is near Shankar Mandir, Turbhe Stores or Durga Mandir. Most of the stamp papers are purchased from the same stamp vendor and the photographs are attested by the same notary. There are no minutes of any of the societies signed by all the members forming the society.

37. Ms. Preeti Shah, learned counsel appearing for Respondents Nos. 5 to 10 and instructing Mr. Thorat, learned senior counsel, filed certain documents on 7th October 2005. The first five documents thereof are photocopies of the undated applications made by the five societies for allotment of the land made to the Chief Minister and which were already referred to above.

38. It is esoteric how promoters of societies of such members "initially applied not to CIDCO but to the Chief Minister whose office finds no place in the MRTP Act or the aforesaid rules for grant of any plot of CIDCO. On the endorsement of the Chief Minister, their applications are marked as "VVIP" and are tested as such by the officers of CIDCO. Though there is nothing on record to suggest that the 6 societies were genuine Co-operative Housing Societies who needed to be allotted a plot for their own residential purpose, the note of the then Marketing Manager of CIDCO dated 16th March 2004 shows that CIDCO has come to be fully satisfied as to their genuineness as per CIDCO's own criteria. Though there were no annexures to the applications for allotment, yet this note states that the documents of the Promoters were annexed thereto. We are also amazed as to how the then Managing Director, who is an IAS Officer, got persuaded that these are genuine housing societies satisfying all the requirements capable of bearing the financial burden.

39. The note of the Marketing Manager of CIDCO dated 16th March 2004 then states that Plot No. 24 has been split up into 6 plots bearing Nos. 24 to 29. This was to be for 5 societies who had until then applied for allotment. Interestingly

the request in the application for allotment of Respondent No. 10 is specifically for Plot No. 29, a number given by the Marketing Manager of CIDCO in his note dated 16th March 2004 as a sub-divided portion of Plot No. 24. It is not known how the 6th genuine and independent society of Respondent No. 10 came to know that precise plot number at the time of its application. On 26th March 2004 CIDCO has allotted plots to each of the 6 societies under separate though identical letters to each of them mentioning the fixed price of Rs. 10500/- per sq. mtrs. at which the plot is allotted on "as is where is" basis and calling for the earnest money deposit (EMD) to be paid on or before 16th April 2004.

Payment of requisite amounts to CIDCO on behalf of the societies:

40. Thereafter, it is seen that each of these Societies of Respondents 5 to 10 by their separate though identical letters sought to forward EMD to CIDCO. The Respondents have themselves relied upon the copy of letters undated but received by CIDCO on 15th April 2004. Each of the Respondents 5 to 10 has paid Rs. 70 Lakhs as per CIDCO's letter dated 20th March 2004 issued on State Bank of "Patiyala" as EMD for their respective plots. These letters are identical containing the same typographical and spelling mistakes. They are addressed to the Marketing Manager of CIDCO showing the addressee to be "Manger". All the letters show the same incorrect spelling of the State Bank of Patiala. The Co-operative Societies have separate addresses of Mumbai Postal District Nos. 92, 86, 14, 19 & 105. It is amazing how all these Societies could have had Bank Accounts in State Bank of Patiala at Vashi. The Advocate of Respondent No. 6 Ms. Preeti Shah, upon our query, produced the account statements of the Respondents in the State Bank of Patiala in a compilation tendered after arguments were over. At pages 25 to 67 are the statement of accounts from Bank of Patiala of these societies including a certificate by the Manager of this branch dated 24th September 2005 which is annexed at page 67. The certificate gives the account number and then states "This is to certify that we were maintaining the accounts with us which has since been closed on 11/4/2005". This includes the account of Amey Cooperative Housing Society - Respondent No. 6 which is now the amalgamated society of all the initial six societies. Thus, it is clear that even the bank account of this lead society was closed on 11th April 2005. Nothing is stated as to whether this society has opened any bank account anywhere thereafter. These statements show the opening of the accounts of the Co-operative Societies in April 2004 and which have all been closed on 11th April 2005 soon after the Petition was filed. The accounts show the initial deposit mainly by cash of Rs. 1000/- for each of them. There are several clearing entries of deposits of several lakhs of rupees each. Thereafter there is a transfer by cheques for payments of the EMD such that almost the entire account is then wiped off. Thereafter there is a further deposit by clearing of large sums followed by immediate withdrawal by various cheques to deplete almost the entire account. The accounts do not show how the members of the society have collected the funds from their own resources or how the societies have themselves made deposits or withdrawal entries. In fact the accounts clearly

support the doubt that these entries, each of which run into lakhs of rupees, could not have been brought from the coiffeurs of the members of any of the societies. These members having an annual income less than of Rs. 20,000/- for the entire family unit are stated to have contributed the EMD of Rs. 70 lakhs per society within a span of a month from one Bank, their separate Society addresses notwithstanding. The Bank Accounts of the Societies bear no reference to any inputs of any of its members.

41. Thereafter, the first, and in some cases even second, installment of the lease premium have been paid by these Societies, aggregating to several crores even prior to their Registration. The Chief Promoters of the Societies are shown to have made affidavits - as bare and bereft of substantiating documents as the affidavits of their members- showing that they are in business or service and are tax payers. (Copies of such affidavits are produced in a compilation tendered by the Advocate of Respondent No. 6 Ms. Preeti Shah after the arguments were over). At pages 19 to 24 are the affidavits of the six Chief Promoters. These affidavits clearly point out that Mansukhlal Nagji is carrying on business of trading as a grain merchant. Rasiklal Nagji Satra is in the business of trading as a rice broker. Mayur Satra is in the business of trading as a rice broker. Anil Mehta is trading as a sole proprietor of Unique Super Market. Damji Kuvarji is carrying on business of trading as a grain merchant and commission agent. This is as per their own affidavits all affirmed on 27th September 2005, that is during the course of the hearing. The affidavit of Mr. D.S. Shinde gives his business address as NL-1/10, Sector 10, Navi Mumbai, but not his residential address. He states that he was in service but does not state as to where he was serving. All of them say that they are taxpayers. All these affidavits confirm what is stated earlier, namely that the promoters of these societies were traders in the markets at Navi Mumbai, except Mr. Shinde, and goes to support the inference that they have collected their own employees, Mathadi labourers and persons from the hutment colonies to file the applications as seen from the record. Documents at Sr. No. 27 to 32 are letters signed by the Estate Manager to CIDCO addressed to the Secretary / Chairman of the six societies stating that the Corporation will have no objection to mortgage the plot as a security for loan to be borrowed from Standard Chartered Bank subject to certain conditions which are mentioned therein.

42. Incidentally Respondent No. 4 have themselves stated that they have "invested" over 55 crores on this project. Respondent No. 4 claims equities in their favour based upon such investment made by themselves though it was specifically provided that these plots were not for builders and were meant for the Societies themselves.

43. It is then seen that Respondent No. 4 as a developer has addressed his letter dated 17th April 2004 to the Chief Promoters of all the 6 societies recording that after the payment of EMD by all of them, the societies found it difficult to construct a large project and contribute the finances therefore or even to arrange

for installments of the finances taken from the Bank and so they offered to have the expertise and resources of Respondent No. 4 on a turn-key basis and required Respondent No. 4 to arrange for all the finances and in view of that they handed over the development of all the 6 plots to Respondent No. 4. This strange letter is written by Respondent No. 4 and confirmed by the Chief Promoters of Respondent Nos. 5 to 10. This was even before CIDCO issued letters of allotment/ letters of intent to each of the Respondents 5 to 10 on 19th April 2004.

Formation of societies:

44. It is seen that 4 days thereafter, on 23rd April 2004 CIDCO, on separate identical letters of each of Respondents 5 to 10, granted No Objection for forming a Registered Society. CIDCO annexed the list of members to those letters under the signature of its Marketing Manager.

The number of members of these societies in the meanwhile increased. It is not known whether the newly added members were also of the same genre as the earlier members in the list supposed to be given by the 6 societies to CIDCO. We have been told that 52 new members have been added in that list then. Further new members have been added by Respondent No. 4 later.

45. The growth in the membership is referred in the following chart:-

Name of Society	No. of Members	No. of members listed in firm attached to when cases allotment letter & application processed in agreement to lease
March 2004 Sea Queen (R-5)	51 (pg. 390)	64 64 (pg.402-409)
Amey (R-6)	51 (pg.196)	64 100 (pg.208-216)
Sagarika (R-7)	51 (pg.342)	63 81 (pg.354-362)
Sea Link (R-8)	51 (pg.147)	99 99 (pg.170-174)
Sea View	51 (pg.292)	64 82 (pg.305-311)
Vinayak (R-10)	50 (pg.245)	50 67 (pg.255-262)
TOTAL	305	404 493

The Societies have been registered under the CO-operative Societies Act on 23rd June 2004 except Respondent No. 5 which was registered on 5th May 2004.

Amalgamation of societies and plots:

46. Even prior to the Registration of these Societies, all of them, are stated to have passed separate identical resolutions on 30th April 2004 proposing to amalgamate their plots with the other adjoining plots in Sector-4 of Nerul. The original minutes of the meeting of the Societies passing these resolutions have not been produced by these Respondents. The xerox copies annexed to their affidavit in reply showing the true extract thereof signed by the Chief Promoters of the Society appear to have been executed in the same ink and show the plot numbers written in ink in the computer printouts.. It is seen that though the original application for allotment on behalf of Respondent No. 10 was made by one Damji Kunwarji, the extract of the proposal to amalgamate on behalf of Respondent No. 10 has been signed by one Mr. Shinde.

47. The affidavit in Reply of CIDCO shows a joint request of all the Societies

made by their letter dated 31st May 2005 to CIDCO requesting amalgamation when 5 out of the 6 Societies were not even registered. To this letter was annexed the Development Plan of Sector 4 showing all the 6 separate plots (as C+R). This application for amalgamation has remained at that.

48. Respondents 5 to 10 through their Promoters sought to pay the first installment of the lease premium to CIDCO on 11th June 2004 prior to the registration of their Societies. The Societies came to be registered on 23rd June 2004.

49. On 12th July, 2004, five letters of allotment came to be issued by CIDCO to Respondents 5 to 10.

50. On 13th July 2004 Agreements to Lease came to be executed between CIDCO and the Societies of the Respondents 5 to 10 individually and separately. The Societies paid the required Registration fee being Rs. 30,000/- each for registration. Though all the agreements have been registered, stamp duty has been paid only by Respondents 5, 8 and 9.

51. Respondents 5 to 10 applied for approval of the plans of the societies showing construction of a single building on all the 6 plots of land on 2nd August 2004 even before the 6 plots were amalgamated by the order of the Registrar of Co-operative Societies. A month thereafter on 7th September 2004, the plans were sanctioned and the commencement certificate was issued by the NMMC on 17th September 2004 before the plots were amalgamated. Hence, construction commenced on the 6 plots as if they were amalgamated before their amalgamation.

52. All the Societies made another application for amalgamation by a joint undated letter on behalf of all the 6 Societies signed by Chief Promoters addressed to CIDCO to request amalgamation, which was received by CIDCO on 29th August 2004. This letter has been signed by one Mr. Shinde instead of Damji Kunwarji who had made the initial application for allotment of plot on behalf of Respondent No. 10. Besides, it is signed also by one Navin Makhija, the deponent of the affidavits on behalf of Respondent No. 6 instead of the initial Chief Promoter one D.S. Shinde.

53. CIDCO consented to amalgamate the plots for development on 31st August 2004, two days after receipt of the request for amalgamation. These Societies however came to be amalgamated into Respondent No. 6 Society by the Registrar of Co-operative Societies only as late as on 17th January 2005. As per the resolution No. 8886, maximum area of each plot was to be 10,000 sq. m. and it was to accommodate 100 members with carpet area of each flat not exceeding 100 sq. m. Nothing is placed on record as to how a contrary decision is taken within two days of receiving the application for the same.

54. Thereafter, it is seen that a memorandum of understanding (MOU) for development came to be executed by each of the 6 Societies with Respondent

No. 4 as the Developer on 30th August 2004, a day after which CIDCO consented for amalgamation.

55. The MOU is for development of plot Nos. 24 to 29. Just as in the earlier letter of all the Societies dated 17th April 2004, this MOU also recites that the societies find it impossible to arrange for funds or had any expertise for construction of huge projects and therefore, they discussed with some prominent developers of Mumbai and have now selected Respondent No. 4 and have entered into this agreement for development under the MOU. Respondent No. 4 divided the amalgamated plot in to block-I & block-II as shown in the 8th and 9th schedules thereto and as per the plans annexed as Annexure-A thereto. Residential flats of two types being 2 Bed-room Hall Kitchen flats (2BHK) and 3 Bed-room Hall Kitchen (3BHK) were to be constructed for which the developers were to charge each of the flat purchasers at the rate of Rs. 2475/- per sq. ft. of built-up area instead of the carpet area contemplated in the resolutions of CIDCO. Arithmetically for an area of up to about 1000 sq. ft. of carpet or built-up area the price of each flat would exceed Rs. 25 Lakhs. The members of these societies who had showed very paltry or no income were required to make that payment for the residential flats on "Marine Drive of Navi Mumbai" at that rate. It would truly be the fabled "Rags to riches" journey. The then 493 members were to be increased to 756 members such that there would be induction and enrollment of 263 new members who would be allotted flats and tenements.

56. As per this MOU, the amenities to be provided for the flats constructed in Block-II interalia included swimming pool, tennis court, squash court, jogging track, gymkhana, club house, multipurpose house, and landscaped garden, amphitheater etc.

57. On 9th September 2004 amalgamation charges are shown to have been paid by Respondent No. 6. The particulars of this payment have not been reflected in the Bank Account of Respondent No. 6 produced by their Counsel and it is not known how that amount came to be collected by that "Genuine" Society.

58. On 14th September 2004 Respondent No. 6 submitted a scheme for amalgamation to the Joint Registrar Co-operative Societies for CIDCO which allowed the merger only on 17th January 2005. Construction and question of the legality thereof:

59. The Commencement Certificate (CC) dated 17th September 2004 issued by the Municipal Corporation to the amalgamated society enjoins the applicant to give notice to the Corporation on completion of construction up to the plinth level and prior to the taking up of the commencement of further work under clause 2 thereof. Respondent No. 4 on behalf of the Societies commenced and continued construction (up to the 4th floor level) without giving this notice and it led the NMMC to issue a Stop Work notice on 18th December 2004. It is somehow submitted on behalf of Respondents 4 as well as 6 that the CC was not for construction of plinth only and hence further construction is not invalidated. A

reading of the CC annexed to the affidavit in reply of Respondent No. 6 itself shows this to be an erroneous argument. As per the CC, the notice containing the intimation is required to be given to NMMC by Respondent No. 4 or the Architect of Respondent No. 6, (on whose behalf Respondent No. 4 was carrying on construction). This notice is to be given upon completion of construction upto plinth level. Such a notice is not shown to have been sent to NMMC. The construction above plinth is, therefore, contrary to the CC and invalidated thereby.

60. It is seen that this defect of not giving the notice of completion of plinth never came to be rectified. That was the mandatory requirement under Clause 2 of the CC. Mr. Singh, learned counsel for the Petitioners, has argued that the purport of that requirement was for the NMMC as the Planning Authority to check the quality and the strength of construction of the plinth level which was of prime importance. FSI-1 was already granted. The plot was shown in Sector-4 as C+R plot. As early as 31st May 2004, well before the issue of CC, the plots were sought to be amalgamated by a request to CIDCO annexing the plan of Sector-4 showing the C+R blocks. C+R blocks allowed a FSI of 1.5. Upon amalgamation of 6 societies and the development work being undertaken by Respondent No. 4 the FSI to the extent of 1.5 could have been utilised and exploited. The plans were sanctioned by NMMC for construction of a huge building on Block-II of the plan on the footing of amalgamation of the plots. The certification of the construction of the plinth level was therefore contemplated to be upon the basis of 1.5 FSI which was directly or indirectly sought to be exploited. Notice was therefore, to be given to the NMMC when construction of plinth level was completed and before further construction was undertaken. After the completion of construction of 7 floors it would be impossible for any Architect or NMMC to certify the strength or load bearing capacity of construction of the plinth. The underestimation of that requirement by the Respondents is to beg the entire issue. The construction of further floors above the plinth level is, therefore, obviously illegal construction uncertified by the Planning Authority.

61. It is contended on behalf of the societies that the stop work notice had been issued because the amalgamation of the 6 societies was not effected till then and consequently not shown to NMMC, and that was only a technical requirement which was satisfied later when the order of Amalgamation by the Registrar of Co-operative Societies dated 17th January 2005 was given to the NMMC on 19th January 2005. It is contended that the construction becomes validated as soon as the permission for amalgamation is forwarded to NMMC. Agreement with the builder and writing off all the rights of the societies in favour of the builder:

62. The fact remains that a blatant use of 6 plots as one amalgamated plot is made before submission to and permission from any lawful authority. This shows a complete control of the entire plot under but one hand of Respondent No. 4. All the acts done prior thereto are without keeping a straight bat.

63. Respondent No. 6 in whom all the other Co-operative Societies sought to

merge upon amalgamation entered into the Final Development Agreement with Respondent No. 4 on 31st December 2004 before amalgamation. That agreement came to be registered on 4th February 2005. The market value as determined by the Government for the property under the agreement has been shown to be 12.45 Crores. The relevant stamp duty along with penalty has been paid on 4th February 2005.

64. Under that Agreement, Respondent No. 6 Society (representing all the 6 societies now merged into it) authorized Respondent No. 4 to develop the residential plot admeasuring 30712.697 sq. mtrs. to construct a building with a FSI of 40681.01 sq. mtrs. Respondent No. 6 executed an irrevocable Power of Attorney in favour of the nominees of Respondent No. 4 contrary to the Regulations under the MRTP Act.

65. Under Clauses 9 & 10 of the said Agreement Respondent No. 6 declared that certain members of the societies had resigned their membership and that Respondent No. 4 would be entitled to recommend new members in their place for which Respondent No. 6 would obtain written permission of CIDCO and admit the new members as recommended by the developer, Respondent No. 4 without any objection from any of the members.

66. Under Clause 14 of the said agreement it is stated that some of the members had not resigned and that they also did not desire to continue as members so that their membership would be transferred. In the event any of those members desire to acquire a new flat in the new construction, that will be upon payment of such consideration as may be mutually agreed.

67. Consequently every single old member was to be eliminated; some of them had already resigned and the others undertook to resign and transfer their membership. If any of the members did not, they would obtain the flat constructed by Respondent No. 4 at a higher consideration which was not specified. Their prices would be governed by the market and as determined by Respondent No. 4. Consequently all the members who were supposedly scrutinized by CIDCO as genuine members of the society would get nothing in the new construction. They are mere names which are to be now deleted and substituted.

68. Under clauses 10,11,12,13 and 14 of the agreement the Respondent No. 4 was to appropriate all the flats to itself in favour of its new members unilaterally "Recommended" by Respondent No. 4 who would have made payment of costs, charges, expenses and consideration to Respondent No. 4 as mutually agreed between them. Under clause 29.6 the office bearers of the society had to admit these members. The societies accordingly signed off all the rights which until then belonged to them, within a few months of their existence and even before their amalgamation. There would accordingly be a complete rejuvenation of the society which would be the society of the new members introduced by Respondent No. 4. We are told that from time to time new members have been

inducted by Respondent No. 4 and their induction allowed by CIDCO. Thus, on the last count, there are 756 members of Respondent No. 6.

69. It is necessary to quote the text of the relevant portion of clauses 9 to 14 and 29.6. They read as follows:-

"9) The society has informed the Developers that certain members of the said society have resigned their membership. The Societies have handed over the list of such members to the Developers for their information and record.

10) The developers shall be entitled to recommend to the Society new members in place and stead of such resigned members as also new members according to the tenements available and the societies shall obtain written permission of CIDCO and if any, additional premium is required to be paid, the same will be paid by such new members / developers / Society.

11) The society has under the aforesaid Power of Attorney granted powers to the said office bearers of the Society to admit new members as recommended by the developers. No member of the society shall object to the admission of any such members by the said Constituted Attorney/ Office bearer.

12) ...the Developers shall be entitled to construct the building/s on the said plots and recommend new members to the Society for the new residential premises constructed.

13) Such recommendation shall be made by the Developers only on receipt of the payment required to be made by all members including the costs, charge, expenses, such consideration and other amounts which will be payable under the agreement which may be made between the developers and proposed members.... The Developers shall appropriate consideration received from such proposed members without in any way being accountable to the society.

14) The Society has informed the Developers some of the members who have not resigned but continue to be members of the society ALSO DO NOT DESIRE TO CONTINUE AS THE MEMBERS OF THE SOCIETY. The Developers will give their consent to the above Constituted Attorney / officer to transfer their shareholdings and/or to resign their membership. However, if such or any member desires to acquire new flats in the new construction he shall be liable to pay such consideration as may be mutually agreed.

29.6) On receipt of all amounts from the proposed members payable by them under the agreements with them the developers shall submit the list of all such purchasers/ persons/proposed members together with the respective flats allocated as also parking space to each of them as occupants in the new building to the society and the office bearers of the society will admit them as members."

70. Such a volte-face cannot be contemplated except by the initial members who were mere name lenders and whom the Petitioners mention as the employees, nominees or friends of Respondent No. 4 alone. Consequently it can be seen that

right from the inception it was only the Proprietor/Chairman of Respondent No. 4 who called the shots. Such an inference is inescapable.

71. This is because except one Mr. Shinde, the other Chief Promoters of the six societies are wholesale traders / merchants in the markets that have come up or shifted to the Navi Mumbai area. This is accepted by the counsel for the societies. Most of the proposed members of the six societies appear to be hutment dwellers in the Navi Mumbai area and from their occupation appear to be Mathadi or labourers working in these markets. Their ration cards are also of recent origin. The six promoters having collected such a motley crowd have signed off their rights in favour of Respondent No. 4 and his nominees by clearly accepting that Respondent No. 4 has arranged all the funds. Thus, persons were put up who were nominees, employees and friends and entirely ineligible to otherwise apply as members of the societies genuinely in need of and capable of acquiring allotment of a plot for construction of a society. This was done not for one, but for 6 adjacent, contiguous plots. Respondent No. 4 worked to have them amalgamated and even before amalgamation was granted, sought to transfer the entire membership of all those hundreds of members under specific written clauses in the agreement.

72. Even the residual rights of Respondent No. 6 society have come to be terminated under the agreement. As provided in the agreement, TDR, if any, utilised on the said plot was to belong to Respondent No. 4 alone. The construction was to be put up as Respondent No. 4 deemed fit. Upon the grant of any additional FSI the benefit was to accrue to Respondent No. 4 alone. The concessions for development of any area free of FSI was to accrue to Respondent No. 4. If the plot was ultimately found to be of more than the area mentioned in the agreement upon survey, Respondent No. 4 would be entitled to real boundaries of the plot and the society was not to raise any objection in the development work. In fact it was enjoined to sign all documents, applications etc. as required by the Respondent No. 4 under clauses 15 to 26 of the agreement.

73. Further under clause 29.3, Respondent No. 4 was to receive and retain all the monies from parties to whom the flats would be allotted and appropriate them without rendering accounts to Respondent No. 6. It was then recorded in clause 29.7 of the the agreement that the society would not even be able to correspond with any of the proposed members, but only to sign all the papers and documents for securing the society's land to enable Respondent No. 4 to raise funds thereon. This shows a complete assignment of their rights by the societies in favour of a builder which is not permissible under the Regulations or the Board resolutions.

74. Under clause 34 Respondent No. 4 was to put up the name board and appoint agents for marketing the flats, and install antennae on the roof. In short, Regulation No. 4 was permitted to deal with the property entirely at its free will as it deemed fit and proper without any fetters whatsoever as if it belonged

exclusively to it.

75. As the climax of this endeavour it was agreed in clause 40 between Respondent No. 4 and 6 that neither of them would be entitled to terminate the agreement though they would be entitled to specific performance thereof. It need hardly be mentioned that the withdrawal of the right of termination without consideration would make the entire agreement void. The grant of the legal right of specific performance, which would be availed of only by Respondent No. 4 in whose favour the agreement was grossly tilted, would accrue to a developer a right contrary to the law laid down by precedents that specific performance of agreements for development is otherwise not available. That apart, the object of the agreement is of such a nature that if permitted it would defeat the provisions of the Regulations and the Board resolutions constituting the law holding the field and would be void u/s 23 of the Contract Act.

76. On 23rd March 2005 and 31st March 2005 by several letters purportedly of the Assistant Estate Officer of CIDCO several additional members were permitted to be enrolled in Respondent No. 6 society for which CIDCO claims to have taken transfer charges. The various documents of the parties at various stages show varying numbers of members and upto as many as 756 are shown as new members being inducted in Respondent No. 6 Society who are perhaps the "genuine" purchasers of the flats from Respondent No. 4 for consideration at the price mutually agreed between them and Respondent No. 4. These are the parties who never applied to be allotted any plot by CIDCO for construction of a Housing Society. They are admittedly the members "Recommended" by Respondent No. 4 as per various clauses of the Final Development Agreement dated 31st December 2004 with Respondent No. 6.

77. What is further interesting to note is that at pages 75 to 78 of the compilation tendered by Ms. Preeti Shah is a list of 46 names of members who have taken loans from various banks and financial institutions. Out of them only the person mentioned at Sr. No. 16 is stated to have taken loan from Standard Chartered Bank. Hardly anyone from amongst these 46 persons is shown in the original list of members to form the six societies. Thus they are all new comers. Lastly, at page 79 there is a list of 12 persons with the caption "List of members who had resigned but are continuing". Thus, on their own admission out of a very large number of original members, only 12 who had resigned are stated to be continuing and admittedly 46 new members are sought to be included who were not there in the original list of members.

78. After the execution of such a one-sided Development Agreement and recording that many of the members have already resigned and the others undertook to resign, the respondents have chosen to show how they had an after-thought and how that act was undone. The Chairman of Respondent No. 6 filed the further affidavit as late as on 26th September 2005 after the Petition was part-heard before us and sought to show that since the members were confused and dissatisfied about the amenities provided, they had desired to

resign, but after the amenities were clarified they had decided not to resign and that all the initial members have continued as members till date. Just how false that statement as can be is seen from the fact that all the luxurious amenities that are now shown to have been granted were already provided to the members in the MOU itself as well as in the Final Development Agreement. In fact in the MOU the amenities included an amphitheater which appears to be absent in the list of amenities annexed to the Final Development Agreement to lease.

79. This affidavit mentions the names of the initial Chief Promoters of the 6 societies. The present Chief Promoter of Respondent No. 10, one Mr. Shinde, is not shown as such in this affidavit. It is not known how he became the Chief Promoter of the said Society which applied later than the other societies and whose application was not only directed to be put up by the then Chief Minister but to be put up by a specific date within a week of the application having been made, and even before its copy was received by the Managing Director of CIDCO.

80. It appears that thereafter the Respondent No. 4 put up its Board on the said plot and commenced development.

81. The Agreement of Lease between CIDCO and Respondent Nos. 5 to 10 specifically provided for a restriction against Transfer. Yet the Societies transferred all their rights, interests and title to Respondent No. 4. Thereupon CIDCO gave a notice dated 28th February 2005 to the Societies terminating their lease and resuming the land.

82. CIDCO received a reply from the Advocates of the Societies dated 14th March 2005 that since the lease deed had not been executed after the agreement to lease, the restrictions against transfer and assignment do not apply and that the mere fact that Respondent No. 4 displayed their Board on the Society premises does not mean that any rights were transferred to them and that even others including IAS Officers got their plots developed similarly. Surprisingly, Mr. Hegde, learned counsel appearing on behalf of CIDCO, has contended before us that in view of such a reply CIDCO cannot enforce its rights under the Agreement to Lease to terminate the lease and to evict the societies and resume the said plots. CIDCO has apparently accepted this reply and thrown up its hands in despair despite being the owner of the land.

Unjustified commercial user and claiming of extra FSI:

83. These acts and execution of documents relate to the development of a part of the amalgamated plot No. 24 for residential use by Respondent No. 4 purportedly for the society of Respondent No. 6. This part consists of what is shown as Block-II in the plan. The plots initially allotted being plot Nos. 24 to 29 and later amalgamated as plot No. 24 also consist of what is shown as Block-I in the Development plan.

84. This Block-I is the part of the plot which is now proposed to be developed for commercial use. No commercial use is allowable in a purely residential plot

(except a 2% area to be used for shops for bare necessities). Only a purely residential plot is to be allotted to genuine Cooperative Societies for the residential purpose. The commercial use is only in a plot specified as C+R in the plan. C+R use is specified in sector- 4. Such a use can be made not by purely Co-operative Housing Societies but by development of plots for the purpose of C as well as R. This would be developed by builders. The builders cannot get such plots for dual use except when tenders are invited. Tenders have not been invited for Plot No. 24 on the ostensible ground that there was tremendous demand by genuine Co-operative Societies to be allotted plots for residential use. Such a plot has been made over to a builder, Respondent No. 4 masquerading under a shroud as shown above. The exploitation for commercial use has been similarly proposed by the same back-door method.

85. Respondent No. 4 have sought to rely upon further Resolutions of the CIDCO Board for justification of their action for commercial development of Block I. These are Resolutions Nos. 9047 and 9048 dated 3rd June 2004. The additional 1.5 FSI claimed by the Societies was sought to be granted under the Board Resolution No. 9047 allowing 10% user for commercial purpose. Further the commercial user was allowed to be increased by "expansion of user" from 10% to 20% of the plot area under a further board resolution No. 9048. The affidavit in reply of Respondent No. 6 shows applications made by Respondent Nos. 5 to 10 On 31st August 2004 to CIDCO "for being allotted 10% of expansion of user" for construction of offices, bank, show-rooms and show-windows (which is the other expression for what is popularly known as "Commercial use"), the benefit of which would accrue not to Respondent No. 6 Society, but to Respondent No. 4 under the terms of the Final Development Agreement and which is contrary to the provisions of the Maharashtra Ownership Flats Act, 1963 (MOFA).

86. CIDCO has granted permission to each of these societies on 7th September 2004 and again on 27th September 2004 for allowing such use subject to payment of lease premium. Consequently it is seen that CIDCO has permitted the 6 societies the expansion of user and the consequent exploitation of Block-I of plot No. 24 for Commercial use by their letter dated 17th September 2004, 10 days after the plans were approved by NMMC and the commencement certificate issued for one single residential building.

87. Strangely, it is contended on behalf of Respondent No. 4 that Respondent No. 6 Society will benefit from such change of user as the additional FSI would be given at 1/2 the base price of R+C and that CIDCO would not incur any loss since it grants additional FSI only on payment of premium. We are not concerned with only the actual loss or gain of any party. What is challenged is the basic grant made by CIDCO.

88. Each of these societies is shown to have made payment of additional lease premium on 20th September 2004. These premiums are made by 6 demand drafts serially numbered 1147 to 1159 to 1161 all drawn on ICICI Bank. It may be remembered that the earlier payment for earnest money was by demand

drafts drawn by these societies on the State Bank of Patiala. The Respondents have not shown their Bank Account statement in ICICI Bank. The fact that they have made the requisite payment for the application for expansion of user as commercial use is not shown.

89. It is important to note that though the sanctioned plans are not produced before us, the proposal for the residential building to be constructed on plot No. 24 as the only construction on the date of the approval of the plans in August 2004 was such as to leave the entire space of Block-1 without construction. Conveniently enough, on that space of Block-I, 10% expansion of user has later on been sought to be allowed by CIDCO to construct a shopping arcade. This Block-I is admeasuring about 10000 sq. mtrs. equivalent to about 2.1/2 acres marked S-1 and S-2 (S denoting "Shop") on the plan. This plan is stated to be put up by one Vineeta Estate Pvt. Ltd. The Petitioners learnt towards the end of 2004 and beginning of 2005 that Vineeta Enterprises Pvt. Ltd. was a sister concern of Respondent No. 4 and it sold the commercial shops sought to be constructed by exploiting the FSI for - commercial purpose under the name of "Palm Beach" Arcade under the plan stated to be submitted on 1st March 2005, but not yet shown to be sanctioned. It is seen that the exploitation of commercial FSI of plot No. 24, which is completely contrary to the regulations, is a denouement of the plot conjured by Respondent No. 4 with CIDCO.

90. This entire exercise has brought to light a camouflage right from the inception masked under the facade of a contract with CIDCO. The Resolution No. 8848 of 23rd October 2003 was passed to give the plots to the genuine societies at fixed price and is supposed to have been passed due to tremendous demand for such plots. The "tremendous demand" of Housing Societies which purportedly drove CIDCO to enter into this exercise is later on stated to have come to naught. However, only 2 letters dated 25th August 2003 purportedly of 2 promoters of 2 societies (which are identical in content as well as date and the list showing their members) supposedly made the initial application to allot to them what was then called Plot No. 24. This application was made for 2 plots admeasuring 19000 sq. mtrs. each, which was approximately the area of the suit plot No. 24 upon amalgamation. CIDCO sought to allot plot No. 24 admeasuring 18500 sq. mtrs. approximately to both these societies by its letter dated 7th October 2003. That letter made a reference to the Society's letter bearing No. GCHS/CM/03/110 A dated 8th February 2003. This letter was however followed by the next letter of CIDCO dated 11th December 2003, cancelling the allotment to both the Societies. Surprisingly neither of the Societies has taken exception to the unilateral cancellation.

91. Mr. Hegde, learned counsel appearing on behalf of CIDCO, conceded that aside from the two Societies which applied initially, not a single other society had applied for being allotted the said plot. Thus, the very exercise was for the "tremendous demand" that never was.

92. Documents 6 to 13 of the compilation without any affidavit filed by Advocate

Ms. Preeti Shah on behalf of Respondent No. 6 are applications made by some other persons and housing societies for various purposes including for allotment of plots of land. We have already referred to the agenda note for Resolution No. 8848 dated 23rd October 2003 which referred to the so-called tremendous demand from the promoters of housing societies for allotment of plots. Obviously, the agenda note refers to the applications which must have been made prior thereto but what we have seen is that only two such applications were seen in the files of CIDCO. All these letters now produced are subsequent to 23rd October 2003. That apart, one does not know how Respondents Nos. 5 to 10 societies got copies of these letters which were addressed to the higher authorities such as the Chief Minister. It is not understood how Respondent No. 6 could have in its possession such copies or what is meant to be conveyed by them. In any case, these subsequent letters cannot explain the so-called "tremendous demand" which existed prior to the resolution dated 23rd October 2003.

93. The applications for allotment of plots 24 A to 24 E and then of Plot No. 29 by letters of the Societies of Respondents 5 to 10, identical in all particulars, complete with the typographical errors, unmistakably show that they were got up letters. The endorsements on the letters show the quick approval from the high authorities. The payment of EMD from a single bank in Vashi cannot explain the payments made by the Societies whose addresses are shown to be scattered all over Mumbai. The Bank Account Statements, produced by the Advocate of Respondent No. 6 show large credit and debit entries, which are not shown to be traced to the members of Respondents 5 to 10. The lack of date as well as any telephone number on the letters show their dubious character. The documents of the list of members of each of the Societies show that they were indeed mere nominees of the one in control and management of the scheme. The documents further show that these persons do not even meet the eligibility criteria shown in the Agenda Note to the resolutions themselves. Such members have not shown how they collected and paid the huge EMD as well as the 1st and even the 2nd installments of the lease premium. The chronology shows that the Societies applied to amalgamate and pay the lease premium even before they were registered. They submitted plans for construction of one large building and obtained sanction of the NMMC and commenced construction of a single building on the 6 plots even before their amalgamation. The endeavour shows that it was at first an attempt to grab one large Plot No. 24 which was initially bifurcated into 24 A to E and 29 and subsequently consolidated once again into plot No. 24, as exigencies permitted. Despite the specific contractual restrictions against transfer as laid down in Clause 5 of the agreement to lease executed by all the societies with CIDCO, the MOU and the consequent Final Development Agreement show nothing but such assignment by transfer of memberships consequent upon resignation of the initial members and the substitution of the new members. These documents show a complete signing off of the rights of all the members of the society. The consideration shown in the MOU, for the plot

which was until then not constructed upon and the facilities to be offered to the members who would be the flat purchasers complete with a proposed amphitheater, swimming pool, etc. as recited in MOU, clearly indicate that the initial members from poorer strata of the society were not to be continued. The division of blocks into Block-I and Block-2 and the submission of plans for construction on only Block-II for residential use separately followed up by an exercise for commercial exploitation on a distinct portion of the plot (Block-I), which until then was not even amalgamated, shows the blue print of a deeply conceived architectural design to put up a development not contemplated even by the resolutions of the CIDCO Board.

94. The inescapable inference which flows from this narration is that the entire act is a conceptualisation of an egregious plan by a developer to obtain a plot meant for C+R with an FSI of 1.5 under a guise of it being a plot only for residential use requiring construction of FSI-1 for genuine housing Societies. This is undoubtedly with the approval of the higher authorities concerned resulting in the convenient actions or omissions.

95. It is seen that almost no procedure has been followed as prescribed by law being the MRTP Act and the Rules made thereunder. Even the board resolution Nos. 8848 and 8886 have been breached and allowed to be breached. The very induction of the societies is beguiled. The fixed price for allotment of land to genuine societies is put to use by the societies which are not genuine. The tender price which could have been obtained by advertising the plot for sale amongst really "the top-most builders of India" could have fetched far higher price to CIDCO. As against that, plots have been given out only to co-operative societies which are sham and feigned. It is the most outlandish grab by Respondent No. 4 as a recusant sleaze under the shroud of Respondents 5 to 10 societies which existed only on paper.

96. It is, therefore, essential to consider the specific provision of law under which these acts have been done by CIDCO as well as Respondent Nos. 4 and 6. Relevant regulations and rules governing lease of land to cooperative housing societies:

97. Development of Navi Mumbai by CIDCO was to be made u/s 118 of the MRTP Act. The CIDCO (Lease of land to Cooperative Housing Society) Regulations 1995 were framed essentially for the disposal of the land by CIDCO as the Developing Authority u/s 118 of the Maharashtra Regional and Town Planning Act, 1966 (MRTP Act).

98. At the relevant time the said Regulations, as amended in 1999, governed the grant of such plots. It will be material to go through the regulations:

(a) Under Chapter I Rule 1 (ii) the Rules were to apply to all lands interalia in New Mumbai.

(b) Under Rule 3(1) CIDCO was required to publish a scheme to invite the

applications from persons intending to promote Co-operative Housing Societies.

(c) Under Rule 3(3) the persons applying were to fulfill two conditions being that they would be residing in Maharashtra for atleast 15 years, and had no residence in New Bombay.

These were conditions required in the Agenda to the Board Resolution No. 8886 also.

These are precisely the conditions which are not fulfilled in the instant case as seen from the files of CIDCO.

(d) Under Rule 4 the Promoter was to submit an application in the prescribed form and pay scrutiny fees as required by the CIDCO.

The application was to be submitted to CIDCO and the Chief Minister.

(e) Under Rule 5 after seeing the eligibility of the persons intending to promote the society, CIDCO may issue letter of intent to lease the land.

This contemplated actual verification and scrutinisation of all the members applying which has been found to be woefully lacking in the instant case.

(f) Under Rule 6 CIDCO is entitled to reject an application not found in order. CIDCO has not rejected a single member in the instant case though most of them did not meet the eligibility criteria.

(g) Under Rule 10 CIDCO is to issue a letter of allotment specifying the particulars of the members of the Society.

(h) Under Rule 11 such letter of allotment is to be issued only after observing that there has been no change of members.

This contemplates that only those genuine members who sought to apply to form the Cooperative societies, would, if found eligible, be entitled to be the members.

Thus no change in the members list is contemplated. In the instant case, the documents on record show a complete mechanism to substitute all the original members.

(i) Under Rule 12 CIDCO and the Society are to execute an Agreement of Lease specifying the members of the Society therein.

(j) Under Rule 13 the agreement of lease is required to expressly satisfy amongst other conditions that the Society must construct a building on the leased plot of land and allot apartments for self occupation of its members whose particulars are mentioned in the Agreement of Lease.

This is to ensure that only those genuine societies who needed to be allotted plots of land for the members who have come together to form the society actually construct the building on that plot of land for the occupation of themselves. From what is narrated earlier, this rule is breached in its entirety.

(k) Under Rule 14 to 17 any kind of transfer or assignment either by the Societies or its members, of the land of the Society or the flats respectively is prohibited for 5 years except with the approval of the Managing Director of CIDCO for the cause of VIS MAJORE.

Upon amendment of Rules in 1999 the restriction against transfer has been relaxed upon obtaining prior permission of the Managing Director of CIDCO.

This implies discretion of the Managing Director which is required to be used judiciously and only in exceptional cases and not arbitrarily, perversely, unreasonably or without application of mind.

Under the Agenda note to resolution No. 8886 the period of restriction against transfer has been reduced from 5 years to 3 years.

In the instant case, transfer of membership is provided practically in its entirety and that too at the outset.

(l) Under Rule 18 the Society is prohibited from admitting any new member at any time. No member is to cease to be so by resigning or otherwise except with the prior written permission of the Managing Director of the CIDCO.

Upon the amendments of the Rule in 1999 the restriction against caesura of membership is removed. Admission of new members can be made with the written permission of the Managing Director under prescribed conditions. In the Agenda to the Resolution No. 8886 the restrictions of change on members is to the extent of 1/4 of the members, but after 3 years of membership.

The maximum number of members in the Agenda Note is to be 100 in each Society. Though therefore, new members can be added up to the maximum limit, the present number of members being 756 has exceeded that limit also within the initial 3 years period.

(m) Under Rule 19 the construction of the flats in the building of the Society is required not to be in excess of the members recorded with CIDCO. The Society is enjoined not to permit any person other than its members to occupy any premises in the building.

Under the amended rules of 1999 the last requirement is removed, so that new members are permitted. However, reading Rules 18 and 19 together it can be seen that transfer of membership would be permitted, if consented by the Board, upon considering each individual case after 3 years of membership. It does not contemplate en mass transfers.

New members would come in only after 3 years.

Those members are also expected to be "genuine" members to whom the present member would transfer his/her individual flat and not those "recommended" by a builder like Respondent No. 4.

(n) Under Rule 20 members are prohibited from appointing any agents or

attorneys in connection with the membership of the Society or the flats of the members.

Respondent No. 4, has admitted to have been nothing but the agent of the Societies, his investment of Rs. 55 Crore itself exposes this fact. The execution of the Power of Attorney, which is directly contrary to this Rule, is also admitted by Respondent No. 4. It need hardly be stated that the contract of agency is a void contract being contrary to the Regulations under the MRTTP Act.

(o) Under Rules 22 and 23 any member or the Society itself committing breach of the Agreement to Lease or the Deed of Lease or the conditions of the Regulations respectively are liable for eviction.

In this case there have been breaches at each stage, difficult to count and yet no action is initiated.

(p) Under Rule 24, the Regulations are deemed to be incorporated in the Letter of Allotment, Letter of Intent, Agreement of Lease and the Deed of Lease to be executed by CIDCO with the Society.

Hence, any other contract to the contrary executed by the Society with any third party (including its agent, which is itself prohibited under Rule 20) is void as being in contravention of the Regulations. This, therefore, vitiates the MOU and the Final Development Agreement which are wholly inconsistent with the Regulations.

(q) Under Rules 26 and 27 members are bound also by further Rules framed u/s 159 and 118 of the MRTTP Act, 1966. Hence, it is seen that the scheme of Development cannot be implemented except under and through these Regulations, which have the force of law.

In the present case, the entire development is against the letter and the spirit of these regulations.

99. In the teeth of such facts Respondent Nos. 4 & 6 contend that there has been no breach of the Regulations which admittedly apply to Respondent No. 6.

100. It can easily be seen that there are special requirements in respect of allotment of plots only to Co-operative Housing Societies. The very basis of the allotment is in a published scheme to ensure transparency. The applications are to be invited upon such publication directly from Societies. The eligibility of the persons applying is to be verified. Persons found ineligible are to be rejected and the list of members is to be certified. No change in membership thereafter is permitted. The flats to be constructed are only for "Self Occupation". Further relaxation was brought about in 1999 which gives discretion to the Managing Director of CIDCO. That discretion must be used such as not to set as naught the scheme itself. The aforesaid resolutions of the Directors are passed to use their discretionary powers. The Lock-in period of 5 years has been reduced to 3 years. 1/3 of the number of members who could not transfer has been reduced to 1/4

of the number of members under the Resolution No. 8886. This resolution itself permits larger transfers of membership. The initial regulation specifically not to allow resignations has been whittled down. However, in the instant case, there is an exodus of the entire membership as seen from the clause in the Final Lease Agreement with several members having resigned and the remaining undertaking to resign and if the same members continue they would require to obtain their flat only at the new rate to be mutually agreed by them and the builder. The entire scheme for a Co-operative Society is therefore, in fact, transformed into a conspiracy for smuggling in members by the builders, with the only exception that the tender contemplated for the builders is replaced by a make-believe application for direct allotment to the Society. Though the entire scheme of the regulations shows that builders are foreign to the scheme, in reality it is Respondent No. 4 who is acting behind the scene. It has resulted in bypassing the tender process and sanctioning the plot to a builder, and entertaining direct applications for allotment of lands to a builder in the name of fictitious Co-operative Housing Societies in the most coveted corner of Navi Mumbai.

101. The Development Plan published by CIDCO on 9th January 2004 inter alia for plot Nos. 23 to 29 in Nerul, Bombay initially tested these plots as one single plot No. 24. It was first bifurcated and then consolidated and shown as C+R. It was initially not reserved for Cooperative Housing Societies. This showed that Plot Nos. 23 to 29, shown as one single plot No. 24, were not to be allotted to Co-operative Housing Societies and had to be sold by tender/auction with FSI of 1.5.

102. Such tender/auction, which is the best test or guide, would fetch the price based upon economies of the market to CIDCO. Instead it has been appropriated by Respondent No. 4 at much lesser price. It is not for this Court to compute the net loss. It is only for it to protect the public undertaking (which has failed to protect itself) and consequently the public from any such enterprise by extricating it in public interest. The notional loss " Rs. 20,000/- per sq. meter has been stated by the Petitioners. The most prime plot of Navi Mumbai would certainly fetch a market price far above the weighted average of Rs. 10743/- for the said plot. We are informed that the State Government, Respondent No. 1 has called upon CIDCO to cancel the allotment made to the Societies, inter alia in this case. (This is based upon the report of one Mr. Shankaran, I.A.S. made on 31st March, 2004 after the Petition was filed). Interestingly enough, on the one hand CIDCO had referred these plots of Nerul in their brochure as "Marine Drive of Navi Mumbai". On the other hand, when the Petitioners have pointed out that there is an under-valuation of this plot, counsel for CIDCO and the Respondents has sought to point out that there is a Nala on one side of the plot and there is a pumping station adjoining it. It is material to note that in spite of so-called deficiencies the Shankaran Committee has held that in this and such transaction, CIDCO has suffered huge losses going into Rs. 35 crores.

103. Further, it must be borne in mind that the Resolutions No. 8848 and 8886

are themselves not challenged. They are indeed in consonance with the Regulations. It is only the action of CIDCO in terms of the Resolution which is challenged in this Petition. It is seen that the Resolutions of the CIDCO Board have not been complied and honoured by both CIDCO and Respondent No. 4 in the name of Respondents 5 to 10.

Defence of the Respondents, legal authorities and the legal position:

104. We are shown that though the Petitioners have made much about Plot No. 24 alone, the reliefs prayed for are in respect of all such plots, similarly allotted, though all these Societies have not been impleaded. We are also told that this is the largest grant by CIDCO out of about 24 such instances and hence the Petitioners press reliefs specially for Plot No. 24.

105. It is contended on behalf of Respondents 4 and 6 that any interference by the Court would be required only if the transaction failed to satisfy the Wednesbury principle of fairness. It is astonishing that in the light of such gross misdemeanour, the Respondents make bold to even suggest fairness. We would fail the public, just as CIDCO has, if we allow the actions which have been challenged in this case to be completed. In fact, it would tantamount of encouragement and perpetuation of blatant illegality.

106. It is contended on behalf of those Respondents that the Petitioners have raised 2 issues:

(i) Under valuation and financial loss and

(ii) allotment to dummy Society.

They therefore, contend that any independent valuation be made to ascertain the loss, if any, in the transaction. The argument is itself misconceived and made to bag the issue. A wholly illegal act cannot be accepted by the Court because it may not result in financial loss. That would be to put money over law. That is impermissible. In any case, in the present matter, the Government has come out with a report that CIDCO has suffered heavy financial loss and CIDCO has not disputed the report. That apart, the contention of the Petitioners is that the allotment is made contrary to the Regulations and the Board resolutions, and not to a genuine Housing Society, but to a Builder in the name of a bogus Society, which has resulted in financial loss to the public exchequer.

107. We may, however, mention that a rough arithmetical calculation of the transaction shows that the initial payment of EMD of 10% of the price is Rs. 4.45 Crores. The further payment at the time of firm allotment of 90% of the price is approximately Rs. 42 Crores. Respondent No. 4 claims to have invested Rs. 55 Crores and claims equity in its favour for such illegal investment. But the MOU shows the prospect of recovery of Rs. 133 Crores " the initial price of Rs. 2475 per sq. ft. of built-up area for about 756 sq.ft. 2 bedroom, hall & kitchen (2 BKH) flats of at least 715 Sq. ft. each (though there are also 3BHK flats mentioned in the MOU). Hence, the computation of loss by the Petitioners stated to be over Rs.

35 Crores cannot be said to be erroneous. This price is derived at the time of execution of the MOU even before the Final Development Agreement and before execution of individual Agreements with flat purchasers, the price of which is not even computed therein and which, as per the terms of the Final Development Agreement is to be as agreed between Respondent No. 4 and the flat purchasers. Respondent No. 4 would obtain such profits after deduction of construction cost.

108. It is contended on behalf of Respondents 4 and 6 that Plot No. 24 is an undesirable and under-developed plot requiring extensive filling and having a channel running through it. Whatever that be, Respondents 5 to 10 Societies applied for allotment of such a plot and Respondent No. 4 made it his privilege to develop it (as flaunted in his website) since it was still the "Marine Drive of Navi Mumbai".

109. Respondent No. 4 has sought to rely upon the General Development Control Rules applicable in Navi Mumbai, under which his plans are sanctioned by NMMC " the New Town Disposal of Lands Regulations 1992. This Court is not concerned with whether Respondent No. 4 has carried on development in consonance with these Rules. Respondent No. 4, as an admitted agent of Respondent No. 6 under the Power of Attorney executed in their favour, is alien to the Regulations and cannot even be recognised or reckoned with. As held in the case of The President, Poornathrayisha Seva Sangham, Thripunithura Vs. K. Thilakan Kavenal and Others, relied upon by Mr. Dwarkadas, learned counsel for Respondent No. 4 himself, only the issues in question in this Petition need be considered by us. The only question is whether the allotment is illegal as being contrary to the Regulations framed under the MRTP Act and the Board Resolutions thereunder.

110. Consequently, though Respondent No. 4 has sought to rely upon further Board Resolutions of CIDCO, (which are not even challenged in this Petition and with which this Court is presently not concerned), and hence sought to show their obligations and rights under the MOU and the Final Development Agreement, we do not see how we can consider any of those. Suffice it to say that the very contract being void as being totally in contravention of the Regulations, no equities or legal rights arise in favour of Respondent No. 4.

111. Mr. Dwarkadas relied upon the Judgment in the case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, to claim equities, which according to Respondent No. 4 have arisen in his favour. That was a case which was held to be suffering from laches. The Appellant was specifically held to be a person put up by unsuccessful tenderers (para 35 of that judgment). It was therefore held that in such a case the Court may refuse relief to the Petitioner if equities are in favour of the Respondent who has in the meanwhile changed his position. We do not see how this is the case which can be stated to be suffering from laches. The Petitioner is a Trust consisting of eminent citizens acting in public interest. The Petition has been affirmed on 16th March 2005. They are vigilant in their own way but they are not detectives to know various developments and to take steps accordingly. The Petitioner was aware about the

reputation of CIDCO going down and petition quotes in para 16 (F) from the report of Shri S.S. Tinaikar, I.A.S. (retired) appointed by the High Court in W.P. (Lodging) No. 115 of 2004. An extract from the website of Respondent No. 4 making declaration of development of this plot in first week of March 2005 is annexed at Exhibit-F and their brochure at Exhibit E to the petition stating that the construction had began a few months ago. It is submitted on the basis of the brochure that the plots for genuine societies were sought to be developed admittedly by a builder. In para 16, there is also a reference to an internal inquiry by the State Government, which is now stated to be Mr. Sankaran, I.A.S. The records now show that Commencement Certificate was issued on 17th September 2004 and the stop work notice was issued on 18th December 2004 by which date construction had come upto 4 floors out of a 23 storey arcade. As we have recorded earlier, the stop work notice had to be given by the Municipal Corporation because the work beyond the plinth had been carried out without giving the requisite intimation to it, to carry out the mandatory inspection regarding the strength of the plinth. The construction was still continued with impunity and it was ultimately stopped after 20th April 2005 when the Division Bench passed the order. By that time, Respondent No. 4 had moved to 7th floor. The entire work is carried out with impunity and in breach of law. The Respondent No. 4 can not therefore be permitted to take advantage of its illegal acts and to contend that it has changed its position to its prejudice when the entire steps are unlawful. Nor can the petition be faulted for laches in any way since the Petitioners have taken steps as expeditiously as possible as narrated above. We also do not see how in this case any equity can have arisen in favour of Respondent No. 4 who has not an iota of legal right, nor has any privity of contract with CIDCO or State Government.

112. Besides, R.D. Shetty (supra) was the case of a Government contract in which tenders were invited mentioning certain standard of eligibility. It was held that the Government cannot depart arbitrarily from these standards and that such departure would amount to denial of equality of opportunity to those who felt bound by the standard of eligibility and therefore, do not submit their tender. In fact, that aspect of the decision squarely hits the Respondent No. 4.

113. In para 10 of this judgment, the Apex Court referred to the dicta of Justice Frankfurter in *Viteralli v. Saton* (359 US 335 - Law Ed. Second Series -1012) that an executive agency must be rigorously held to the standards by which it professes its action to be judged. The Court held that it is a rule that has an independent existence though supportable as emanating from Article 14 also. It is a rule judicially evolved as a check against exercise of arbitrary power by the executive authority. And then in para 11, it observed -

" ...The discretion of the Government has been held to be not unlimited in that the Government cannot give or withhold largesse in its arbitrary discretion at its sweet will. It is insisted that the government action is based on standards that are not arbitrary or unauthorised."

The propositions apply with full force in our case.

114. Strangely enough, Respondent No. 4 has contended that the Petition suffers from laches and cited Judgments in cases of laches. The above admitted chronology shows that the illegal acts of Respondent No. 4 have spanned the entire period and have continued even pending the petition; the last induction of members were on 31st March 2005 even after the filing of the Petition. The revised plan of the said plot has been refused to be approved on 20th April 2005, after the filing of the Petition. The reliance upon the case of *Devidas Rama Chari v. BPC Ltd.* Reported in 2005 (1) All MR 423 is entirely misplaced. In that matter, the Respondent had set up the petrol pump and had changed his entire way of life whereas the Petitioner was seen to be tardy and indolent having filed the petition after 4 years. This court rightly refused to interfere. So is the case of *Narmada Bachao Andolan v. Union of India* reported in Jt. 2000 Supp 2 SC 6 of which only para 224 is relied upon, which states that principles of laches apply to P.I.L. Also. The case of *State of M.P. and Others Vs. Nandlal Jaiswal and Others*, was a case of considerable delay in challenging the grant of liquor licence after the act complained of, so that the Petitioner was observed to be tardy, acquiescing and lethargic. Same is the position in the case of *State of Maharashtra Vs. Digambar*, where the petition was filed some 20 years after to redress the alleged wrong.

115. The present petition seeks to undo the damage done to CIDCO as the Public Authority and consequently to the public at large and to prevent any further damage. The allotment of plots will have to be cancelled. As a result, there could be various consequences. The entire illegal construction put up by Respondent No. 4 has therefore, to be forfeited. That would entail further action. That would further necessitate the regrant of the concerned plot through tender/auction to builders and developers or at the fixed price to a genuine Co-operative Housing Society.

116. Mr. Singh on behalf of the Petitioners has drawn our attention to the case of *Friends Colony Development Committee Vs. State of Orissa and Others*, in which it was observed that an illegal construction of the 5th floor, of a building for which 4 floors were sanctioned, was required to be demolished with a compensation fee to be paid for rehabilitation of occupants liable to be displaced upon the action taken by the planning authority for the illegal construction. It has further been observed that "the arms of law must stretch to catch hold of the unscrupulous builders." who "indulge in deviation". It was also observed that "Officers indulging in deviations should not be spared", and that "private interest stands subordinated to public good." Following upon that judgment, we have to examine appropriate corrective measures for the blatant violations in this case resulting in unauthorised construction.

117. Mr. Dwarkadas appearing for Respondent No. 4 has relied upon the judgment in the case of *The Printers (Mysore) Ltd. Vs. M.A. Rasheed and Others*, , in which case the Supreme Court criticised the act of the High Court in

entertaining the Writ Petition challenging and alienating land by a public authority by way of a lease. In that case the Authority had the power to lease, sell and transfer properties u/s 38 of the Bangalore Development Authority Act, 1976 and the Bangalore Development Authority Rules 1982 which applied to it. There was no specific restriction, condition or limitation on the power of the Authority to lease the land for development. The alienation in that case was questioned only on the ground that no tender or auction was called and no public advertisement was issued showing any alienation to be made as required under the allotment rules. It was held that the Authorities had power to lease subject to certain restrictions and conditions. The allotment rules were not applicable to the allotment in question. The facts of that case are consequentially distinguishable. In the present case, CIDCO has no authority to lease the land without following the Regulations which squarely apply. The alienation made in contravention of the Regulations is therefore challengeable.

118. In the case of Mahendra Baburao Mahadik and Others Vs. Subhash Krishna Kanitkar and Others, , following the judgment in Friends Colony(supra), it has been held that the direction of the High Court to demolish unauthorised construction was correct. In that case upon a portion of land of the Appellants being taken over for road widening, the Bhiwandi Municipality allowed certain repairs to be carried out to an old house on another portion of that land. Relying upon certain wrong documents and incorrect statements, the appellants used that permission to construct a new 6 storeyed building. The permitted construction was only of ground + 2 storeys. To accommodate the appellant, the Municipal Council had passed a resolution to regularise the unauthorised construction. It was held that the Municipal Council, which is a statutory authority, has no power to regularise the unauthorised construction and realise development charges in respect thereof. It was further observed that demanding such charges without prejudice to the rights of Municipal Council would not create any legal rights in favour of the Appellants and that such charges do not exonerate the Appellants from the consequences of commission of offence or the Municipal Council for regulation of unauthorised structures. Ultimately, the Judgment of the High Court holding that unauthorised and illegal constructions cannot be compounded and that the structures would have to be demolished was upheld by the Apex Court.

119. Paragraph 25 from the judgment in the case of Friends Colony (supra) was quoted with approval in para 44 in this judgment. This para reads as follows:-

"25. Though the Municipal laws permit deviations from sanctioned constructions being regularised by compounding but that is by way of exception. Unfortunately, the exception, with the lapse of time and frequent exercise of the discretionary power conferred by such exception, has become the rule. Only such deviations deserve to be condoned as are bona fide or are attributable to some misunderstanding or such deviations the benefit gained by demolition would be far less than the disadvantage suffered. Other than these, deliberate deviations

do not deserve to be condoned and compounded. Compounding of deviations ought to be kept at a bare minimum. The cases of professional builders stand on a different footing from an individual constructing his own building. A professional builder is supposed to understand the laws better and deviations by such builders can safely be assumed to be deliberate and done with the intention of earning profits and hence deserve to be dealt with sternly so as to act as a deterrent for future. It is common knowledge that the builders enter into underhand dealings. Be that as it may, the State Governments should think of levying heavy penalties on such builders and therefrom develop a welfare fund which can be utilised for compensating and rehabilitating such innocent or unwary buyers who are displaced on account of demolition of illegal constructions."

120. Further referring to the earlier case of *M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others*, thereof was quoted. The relevant part thereof is as follows:-

"73. The High Court has directed dismantling of the whole project and for restoration of the park to its original condition. This Court in numerous decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorised. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles...."

121. Later, while distinguishing the case of *Municipal Corporation of Calcutta v. Mulchand Agarwalla* reported in (1995) 2 SCR 995 the observations in that case were referred in para 47 of *Mahendra Baburao* (supra):

"The conduct of the respondent in adopting a hide-and-seek attitude in completing the constructions in deliberate defiance of the law calls for severe action. It would be most unfortunate, and the interests of the public will greatly suffer, if the notion were to be encouraged that a person might with impunity break the building rules and put up a construction and get away with it on payment of fine. All this would be good justification for making an order for demolition."

In *Mahendra Baburao*, ultimately after examining the case of deviance of the law by construction of 4 storeys in a new construction, the Apex Court dismissed the Appeal with costs of Rs. 50,000/- and called upon the Municipal Council to carry

out the order of the demolition passed by the High Court.

122. The approach and the observations in that case are true guide to the action required to be taken in this case also. The seminal deviation made in this case of allotting lands to fictitious Societies only to grant it to a professional Builder, Respondent No. 4 which can be assumed to be a deliberate act requires no consideration to be shown to such builder for any construction which he has put up. The construction put up on the amalgamated plot even before amalgamation cannot even allowed to be compounded. The acts done in deliberate defiance of the law and to outwit the law and steal a march over others by breaching the Regulations cannot be allowed to prevail, unless there is a better way out by use of judicial discretion guided by expediency in public interest. It will be within these parameters that directions in this Petition would be required to be passed taking into consideration the loss and waste which may be caused by actual demolition of a large seven storeyed structure.

123. Upon the reversion of the land to CIDCO, CIDCO would have to see that the land is allotted within the framework of the aforesaid Regulations framed under the MRTP Act, 1966 and as permitted by the Board Resolutions of CIDCO. Further, upon considering the directions passed in the case of Friends Colony (supra), the land shall have to be referred back to CIDCO to be allotted to those genuine Societies under the Scheme or to be offered to Builders upon a tender. Urban land in Mumbai as well as in Navi Mumbai is scarce and expensive and cannot be permitted to be grabbed for profiteering.

124. We are not shown by any documentary evidence the creation of third party rights infavour of any genuine third parties. In fact we are shown none at all. We take it that even if certain documents would be produced, they would be of those members "Recommended" by Respondent No. 4 and accordingly their nominees and for which the Respondent No. 4 alone would be liable.

The charts filed by the Petitioners after inspection, the direction given on 28 th October 2005 and the response of the Respondents:

125. There are two developments in this matter which we must advert to at this stage. Firstly, after the Petitioners took inspection of files of CIDCO containing the applications of Respondents Nos. 5 to 10 Society, they filed a chart on 6th October 2005 giving particulars of the applicants in different columns. The first five columns thereof are relevant for our purpose which were as follows:-

- (1) Name
- (2) Whether the applicant has signed or has put in his thumb impression
- (3) His address in the application or affidavit
- (4) Date of issuance of ration card
- (5) His monthly or annual income

Based on this chart, a submission had been made that most of the applicants were ineligible to become members of the genuine cooperative housing society.

126. The submission of the petitioners was that the original members have been only name lenders who were to resign and the societies were bogus societies. For that purpose, they had filed a chart on 6th October 2005 as pointed out above. All parties were permitted to take inspection, but although the Respondents were served with that chart, none of them had chosen to file their response. It is for this limited purpose that the matter was notified for direction once again on 28th October 2005. This development was recorded in that order. In para 3 of our order, it is specifically observed as follows:-

"The counsel for CIDCO, the builder and societies were all served with this chart filed by the Petitioners. None of them have chosen to file their response. It is for this limited purpose that the matter has been notified today for direction to bring this fact to the notice of all the parties so that it should not be said that they did not have any opportunity to file their response."

Thereafter we recorded the submission of Mr. Dwarkadas that according to him, this submission was uncalled for and that the builder was not going to file his response. Ms. Shah for the society sought to take inspection once again. By that order, we permitted her as well as CIDCO to take inspection until 16th November 2005. We finally observed in that order as follows:-

"We expect them to file their response if they deem it fit only on this aspect as to whether the statements in the first five columns are correct or otherwise."

127. As stated above, builder had declined to file any response. On behalf of CIDCO, one Mrs. Devika Bal, Marketing Officer, filed an affidavit on 16th November 2005 and pointed out few errors and variations in the chart submitted by the Petitioners. That however does not detract from the non-eligibility of majority of the applicants as seen from their original applications. Shockingly enough, even at this stage the officer making the affidavit on behalf of the CIDCO does not have the courage to accept that CIDCO had done hardly any scrutiny worth the name. The sad part is that when an opportunity is given to a public body, there is neither a satisfactory explanation forthcoming, nor a readiness to own a mistake nor a desire to correct.

128. On behalf of Respondent No. 6, Ms. Preeti Shah, Advocate filed a statement on 18th November 2005 under the caption " Response of Respondent No. 6 to the chart filed by the Petitioner on 6th October 2005. It is stated in this response that the charts given by the Petitioners are incomplete and do not project the complete and correct particulars of the applicants. It is then stated that the addresses are incomplete. Then it is stated that out of original 493 members, 460 have given their ration card and out of remaining 23, 20 had given other documents. Thereafter it is sought to be explained that many of the applicants had given their new ration card but had surrendered the earlier one. This is completely an afterthought. We are concerned with the information which was

given by the applicants to the CIDCO at the outset and the scrutiny or the lack thereof. Thereafter it is stated that all 493 applicants are genuine and bona fide members. However, to dispel any doubts, only affidavits of 104 original members are filed. To this statement a chart is annexed giving the income of some of the original members, but nothing of the kind is in fact seen from their original applications and this is nothing but an attempt to improve without any supporting documents whatsoever. The affidavits of 104 persons are identical. They state that the charts filed by the petitioners make allegations which are beyond the scope of this petition. It is further stated that any order passed on the petition on the basis of the allegations after hearing of the petition was complete by preparing tables will cause irreparable harm and injury to the concerned societies and their members. Along with these affidavits, various supporting documents are sought to be put in. Thus, it can be clearly seen these affidavits contain arguments in support of a feeble cause. The files which have come on record are of CIDCO. The files do not indicate any income worth the name of most of the proposed members of these societies. They do not seem to have any proper residential addresses except in some hutment colonies. They have hardly produced any documentary evidence of 15 years residence in Maharashtra. This is a scrutiny which CIDCO was supposed to do. CIDCO having not done that, the Petitioners have pointed out these factors by producing the charts. All these submissions were already made during the arguments, and the charts were placed on record only to assist the Court. Right in the Petition it is contended that Respondent Nos. 5 to 10 - Societies are bogus Societies and it was clearly canvassed that the employees, nominees and acquaintances of the Chief Promoters were used as name lenders. The Counsel for the Respondents-societies and the builders had defended these submissions during the arguments, though miserably. Hence, the contention in these affidavits is an argument in despair. It is only to put the Respondents to a clear notice once again and to seek their explanation, if any, that a specific order was passed on 28th October 2005. From what is narrated above, CIDCO as well as the societies have miserably failed to explain the eligibility of the member applicants or that their scrutiny was ever done. In fact, the seminal case of the Petitioners that the applicants were the employees, nominees and friends of the builders has emerged clear after scrutiny.

Two Civil Applications moved in this petition and the orders thereon:

129. We have noted that by the order passed on 20th April 2005, a Division Bench had stopped further construction. Respondent No. 6 - Amey Cooperative Housing Society moved Civil Application No. 22 of 2005, prayer (a) whereof was to put up RCC construction. Inasmuch as the very allotment was challenged and further construction injuncted, we could not permit further construction and hence the prayer was rejected and so also the civil application by the order passed by us on 3rd August 2005.

130. The second aspect of this matter is that as recorded earlier, prayer (a) of

this petition has been that the allotments to Respondents Nos. 5 to 10 societies be quashed and set aside and prayer (b) is to stop the construction activities. Prayer (c) is an alternative prayer to prayer clauses (a) and (b) and which prays that in case the construction has reached an advanced or irreversible stage, Respondents Nos. 1 and 2 be directed to recover in full from the builders / developers and the cooperative housing societies the difference between the market value and the price charged by Respondent No. 2. As far as this alternate prayer (c) is concerned, Civil Application No. 22 of 2005 was moved praying in prayer clause (a) thereof that an independent valuer be appointed to make the valuation of the property so that in the event the court is inclined to pass the order in terms of prayer (c), this valuation could be considered. We disposed of this civil application by holding that prayer (a) of this civil application will be decided when the main petition is heard and along with prayer (c) thereof. Civil application was disposed of without granting any of the other prayers.

131. Now, as can be seen, this prayer (c) was an alternative prayer. Inasmuch as we have come to the conclusion that the allotments to Respondents Nos. 5 to 10 were unauthorised, there is no question of our regularising the same. They have also not reached such a stage that the construction should be permitted to be completed and in any case not under the authority of these societies which have given it up in favour of Respondent No. 4, the builder.

132. As far as the loss suffered by CIDCO in this transaction is concerned, the estimate of the petitioners is in the range of Rs. 36.50 crores as stated in the petition, and the Sankaran Committee has placed it at around Rs. 35 crores. The learned Advocate General Mr. Kadam was good enough to place the relevant extract of the Sankaran Committee. In the reply filed by one Ashok Gharat, Under Secretary to Government of Maharashtra dated 27th June 2005 to Civil Application No. 12 of 2005, a reference was made to the Sankaran Committee Report. In para 2, it is stated in this affidavit that according to this Committee Report, the prevailing market rate was not less than Rs. 21,000 per sq.m. and that the Committee was of the view that the loss suffered by CIDCO was aggregating to Rs. 35 crores. This was on the footing of the information received with respect to the transactions in nearby area. On that footing, on a rough basis, Mr. Sankaran had drawn his inference.

133. To this civil application, CIDCO had filed an affidavit of one Shri V.S. Marathe and in para 8 thereof it was stated that CIDCO was a statutory agency of the State and since the State had directed CIDCO to cancel certain allotments, CIDCO had initiated the appropriate process of issuing show cause notices which included Respondents Nos. 5 to 10 also. As stated above, inasmuch as we are inclined to entertain prayers (a) and (b) of this petition, we do not think it necessary for us to go into prayer (c). That is a matter between the State Government and CIDCO and the concerned parties. In any case, in the direction that we are passing hereafter, we are taking care of this aspect. We are certainly not of the view that the construction should be regularised for the bogus housing

societies under Respondent No. 4 or for that purpose the loss suffered be recovered from the societies or Respondent No. 4.

CONCLUSIONS:

134. Having recorded the factual and legal aspects as above, to cut the long story into short, the entire problem came up in the following manner. Five traders and one Mr. D.S.Shinde approached the then Chief Minister of Maharashtra Mr. Sushilkumar Shinde with undated letters for the six cooperative housing societies seeking allotment of plots of land meant for genuine co-operative housing societies. The Chief Minister endorsed on five of them to the Managing Director to "please put up" and on the sixth to process and pass by the specified date. The five traders and the said Mr. D.S.Shinde collected some friends, Mathadi labourers, hutment dwellers, and employees and filed their applications. The officers of CIDCO did not bother to scrutinise as to whether they were fulfilling the requirements and allotted the plots to those societies. Inasmuch as these societies and their members were only name lenders, they entered into agreement with Respondent No. 4, a builder who would finance the project and signed off all their rights in his favour. Practically all the original applicants resigned and it is left to Respondent No. 4 to recommend whosoever he wants to bring in. The original plot was for FSI 1 and now it will be for FSI 1.5 including for commercial user. Plots meant for genuine cooperative housing societies, given to them at a concessional rate of about Rs. 10,000/- per sq. m. as against the market rate of Rs. 21,000 per sq. m., were grabbed by the builder defeating the very purpose of the resolutions which CIDCO had passed.

135. By a genuine co-operative housing society, we normally mean an entity formed by people coming together to set up a housing complex as per their requirements and as per their financial capability. In that process first they come together, hold meetings, understand and assess each others requirements and financial capability. Then they examine the likely cost of land and construction and decide on the feasible area where such a plot would be available and which they can afford. Thereafter they search the requisite plot of land, examine the conditions of allotment and price fixed by the land owning authorities. If they find it affordable, they appoint an architect, prepare an initial plan as per those conditions and their capability, again approach the authority with supporting documents. Simultaneously, on a tentative indication of the likelihood of allotment of plot, they proceed to form the society and take follow-up steps, such as to collect the fund, pass the bye-laws, approach the land owning authorities, pointing out that they fulfill the conditions, approach the municipal body for sanction of the plans and also approach the financing bodies if loans are required. Thereafter they proceed to appoint a contractor for construction. In all this process there is a participation of the members, their meetings, examination of their difficulties, expectations and capabilities. Basically they retain their control on the entire process all throughout until they occupy the houses as per their expectations and capabilities.

136. In the present matter, when did all these members of each society meet ? Did they visualize setting up of a housing complex with a swimming pool, gymnasium and amphitheatre ? Did they assess the cost therefore and their own capability ? Did they get any initial stage prepared by an architect ? Where are the minutes or the particulars of any such efforts ? Did they ever know that in their names a C plus R complex was sought to be put up which was far beyond their means ? Did they examine as to how much finance would be required, how will they arrange it and repay it and in how many installments ? These basic questions will arise to any prudent mind.

137. The societies have produced letters containing permission by CIDCO to mortgage the property. Most of the members have not disclosed any income particulars in their original applications, and those who have disclosed it is seen that their income is mostly less than Rs. 20,000/- per month. Each of these flats will cost nearly Rs. 20 to 25 Lakhs, if not more and practically all the members will require a loan of at least Rs. 20 Lakhs, considering their financial position. The financing bodies also examine the repaying capacities before the loans are given and normally in the case of salaried persons they see to it that the burden is not more than 20 % to 25 % of their monthly income, so that their loan is ultimately returned. In the instant case, even if it is assumed that the loan of Rs. 20 Lakhs is sanctioned to each of these members, and spread over 20 years, even at the rate of 8% interest, the monthly equated installment will not be less than Rs. 20,000/- which is far more than the monthly income of most of the members.

138. CIDCO which is allotting the plots to genuine co-operative societies is expected to scrutinise fulfillment of its conditions. The prima facie examination shows that most of the applicants did not produce documents justifying their residence in Maharashtra for 15 years prior to the application. As per CIDCO's requirements, at-least 1/4th members were expected to continue with the society for the initial period. In the present case, there is a clause in the agreement with the builder declaring resignations of most of the members and assuring those of the remaining. The idea behind the relevant rule is to provide affordable good housing to a stable section of the citizens. When CIDCO spoke of genuine co-operative societies a minimum inquiry of their formation and the capability was expected. This could have been easily done even by a cursory examination of the documents that were initially tendered. This was particularly necessary since the plots were being allotted to genuine societies at a lesser price as against those meant for the builders where such conditions would not govern. It was CIDCO's own case that there was tremendous demand from genuine societies for such plots. If that was so, it cannot be that somebody applies on behalf of a supposedly genuine society enclosing applications of large number of ineligible people and yet CIDCO allots the plots to them without any scrutiny, when other societies would be waiting.

139. It is thus obvious that the original members of the applicants societies were

mere name lenders. It was a grand plan to take advantage of their poverty, lack of understanding and ignorance, and it could not be executed unless, the original chief promoters, the builders and the officers of CIDCO at the higher level such as the Managing Directors were party to it. Would the Managing Directors and the officers of CIDCO have entertained these applicants who are principally slum dwellers for this prime plot known as "Marine Drive of Navi Mumbai", if they were to approach them without being led by these traders and supported by a builder and without the blessings of the Chief Minister ? It is either a case of involvement in the design or of gross dereliction of duty. In either case, it is unjustifiable and highly objectionable and the consequences must follow.

140. One cannot say that CIDCO had not done good work in the past, though at times, there has been criticism of some of its allotments even in judgments of courts. CIDCO has developed a huge township in Navi Mumbai and also in Aurangabad. A very large section of the lower middle class, middle class and higher middle class has settled there. Now suddenly it appears that this device has been invented and with the participation of the officers of CIDCO right from the Managing Director to whosoever are the persons below, all the conditions of allotment and scrutiny are given a go-by and a prime plot is sought to be handed over to a builder on a platter. This would have gone ahead but for the intervention of the Petitioners. It is not that genuine cooperative housing societies are not available. If officers of CIDCO were to look around, they could have searched them amongst the various sections of the society such as the government, bank or insurance employees and teachers and various other people who are in need of good housing and who are prepared to pay appropriate prices. However, obviously, the idea of the authorities was the other way round and that is why a good scheme has been permitted to be misused with full connivance of the officers of CIDCO. Poor hutment dwellers are used as pawns by the traders in the market who were obviously party to the scheme along with these officers.

141. Thus, what we find is that there is a complete dereliction of responsibility on the part of the then Managing Director of CIDCO and whosoever were in-charge of this project. Merely because the then Chief Minister had asked them to process early, they have given a complete go-by to scrutiny. In para 16-D of the petition, the Petitioners have submitted that the persons concerned should be held accountable. In view of what is stated above, we expect the authorities of the State Government and CIDCO to take appropriate actions against the persons concerned so that this kind of deviation does not take place in future.

142. All this has become possible because of the sustained efforts put in by the petitioner trust, its office bearers and their counsel. We record our deep appreciation for their efforts. The petition was filed in March 2005. Two civil applications have been moved by the respondents therein. A number of affidavits have been filed. The matter has been heard before different Division Benches from time to time. Inspection of various files and record had to be taken and

charts had to be prepared. The petitioners will have to be compensated at least in some measure. We are making a provision for that as well.

143. Before we conclude, we would like to record that the Indian republic is committed to the goal of overall economic and social upliftment of its citizens staying in villages as well as in cities. This is to be done amongst others by the process of planning. The satellite township of Navi Mumbai has been proposed and has come up to bring about decentralisation of Mumbai, so that there is no crowding in this urban metropolis and a better quality of life is provided. It is for this purpose that laudable schemes such as those for genuine cooperative housing societies are necessary. It is at the same time necessary to see to it that they are not misused, so that the credibility of the planning process does not suffer.

144. For the reasons stated above, the petition succeeds and we pass the following order:-

(a) Allotments made to the six housing societies (Respondents Nos. 5 to 10) by Letters of Intent of CIDCO dated 26th March 2004 and 6th May 2004 are hereby quashed and set aside. All rights of the persons who have entered into agreements concerning development of these plots No. 24-29 including those of -

(i) the six housing societies,

(ii) the Respondent No. 6 Society which is the amalgamated society and successor to the six housing societies, and

(iii) Respondent No. 4 which is claiming to be the developer for this amalgamated society, will stand extinguished.

(b) Respondent No. 4 (along with their agents and servants) are permanently enjoined and restrained from entering upon, remaining in and/or putting up any construction on these plots No. 24-29.

(c) The entire construction on these Plots No. 24-29 stands forfeited to and vested in CIDCO. CIDCO is permitted and expected to enter upon this land and take over the entire construction and appoint its security personnel to guard it forthwith.

(d) CIDCO is directed to evaluate the cost of construction which has been put up so far. The evaluation will be done by a Committee of three officers, viz.

(i) Chief Engineer, CIDCO,

(ii) Chief Engineer or his nominee from the Navi Mumbai Municipal Corporation, and

(iii) Chief Engineer from the State P.W.D.

(e) Navi Mumbai Municipal Corporation will examine as to whether the construction could be regularised, if, in its view, it is in any way capable of being

regularised. CIDCO will move the Municipal Corporation for that purpose forthwith. If the Corporation takes the view that the construction cannot be regularised, then CIDCO shall pull it down. CIDCO will be entitled to recover the cost of pulling down the structure as well as the removal of debris from Respondent No. 4.

(f) Thereafter CIDCO will decide whether the plot with construction should be allotted to the genuine housing societies or whether it would like this plot and construction to be allotted to a builder decided by the process of inviting tenders.

(g) In the event, CIDCO decides that the plot should go to the genuine housing societies, it will issue an advertisement accordingly in one English and one Marathi newspaper and, on receiving the offers based on the construction cost with appropriate administrative charges, it may take necessary decision of allotment. These societies will be required to give a list of their members, their addresses, affidavits that they are staying in Maharashtra for not less than 15 years with supporting documents and the documents of income showing that they will be able to subscribe to a flat which will cost around Rs. 15,00,000/- at least. The allotment will be done only after finding out as to which is the most eligible society.

(h) In the event, Municipal Corporation approves the retention of the structure, CIDCO will take a decision as to whether they would like to retain the construction as it is.

(i) In the event CIDCO decides that these plots be given to the builders, again a similar advertisement will be given and offers will be sought fixing appropriate higher base price. The builders responding to the tender will have to deposit the entire cost of construction and administrative charges arrived at by the Committee to begin with as earnest money and thereafter buy the plots at appropriate price as may be decided by the tender process.

(j) In the event CIDCO so decides, it will reserve another plot of equivalent size in the nearby locality for genuine housing societies.

(k) In view of what we have noted above, namely that Respondent No. 4 is responsible for the resultant situation, Respondent No. 4 will not be permitted to participate in this bid and will not be compensated for the construction which is directed to be forfeited. It will be open for it to recover its losses from Respondent No. 6 or others including officers of CIDCO if it deems them responsible.

(l) It is expected of CIDCO to similarly examine the development, if any put up on other disputed 23 plots of CIDCO so far allotted in the names of Co-operative Societies in the light of the above directions and take necessary steps as in the present case, in accordance with law.

(m) If the Petitioners apply, CIDCO will offer inspection of all the present as well as the future documents and correspondence in respect of all these plots of

CIDCO required to be allotted to Co-operative Housing Societies in Navi Mumbai to the Petitioners.

(n) Rule is made absolute as above. Respondent No. 4 will pay Rs. 1,00,000/- to the Petitioners as costs of this petition.

145. Mr. Shroff for Respondent No. 4 and Ms. Shah for Respondent No. 6 seek stay of this order. Mr. Hegde makes a statement that for a period of 8 weeks CIDCO will not take over the possession of these plots and the construction. In the meanwhile, security of Respondent No. 4 on these plots can continue. Except as stated above, there will not be any stay of the judgment and order that we have delivered.