

(2009) 09 BOM CK 0142

In the Bombay High Court

Case No : Writ Petition No's. 1036 and 1075 of 2007 and 2720 of 2008

Sigtia Constructions Pvt. Ltd.

APPELLANT

Vs

State of Maharashtra and Others
 Ramchandra
Mahadev Jagtap and Others Vs The Cheif Executive Officer,
Slum Rehabilitation Authority and Others
 Chandrakant
Sitaram Mane Vs Slum Rehabilitation Authority

RESPONDENT

Date of Decision : 17-09-2009

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices
Act, 1971 — Section 44, 45

Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 —
Section 4

Citation : (2010) 1 BomCR 414

Hon'ble Judges : R.G. Ketkar, J;D.K. Deshmukh, J

Bench : Division Bench

Advocate : Aspi Chinoy and Himanshu Kode, instructed by Shaunak Satpute and Co. in Writ Petition No. 1036 of 2007, F. Devitre and H.N. Thakore, instructed by Thakore Jariwala and Associates in Writ Petition No. 1075 of 2007, Janak Dwarkadas and J.P. Sen, instructed by Kanga and Co. in Writ Petition No. 1589 of 2007, S.U. Kamdar, Alpana Ghone and Khaitan, instructed by Anoop Khaitan and Co. in Writ Petition No. 2720 of 2008 and Himanshu Kode and Anant Upadhyay, instructed by Shaunak Satpute and Co. in Chamber Summons No. 3 of 2008, for the Appellant; Ravi Kadam, General and G.D. Utangale, instructed by Utangale and Co. for Respondent Nos. 4 and 5, Rajeev Narulla, instructed by Jhangiani Narulla and Associates for Respondent No. 7, Janak Dwarkadas and J.P. Sen, Kanga and Co. for Respondent No. 8 in Writ Petition No. 1036 of 2007, Ravi Kadam, General and G.D. Utangale, instructed by Utangale and Co. for Respondent No. 1, Janak Dwarkadas and J.P. Sen, instructed by Kanga and Co. for Respondent No. 3, C.U. Singh and Gunjan Shah, instructed by Shaunak Satpute and Co. for Respondent No. 4 in Writ Petition No. 1075 of 2007, Ravi Kadam, General and G.D. Utangale, instructed by Utangale and Co. for Respondent No. 1, Vinod Bobde Sunil Goel and Sachin Kadam, Shaunak Satpute and Co. for Respondent No. 3, K.K. Singhvi, in Writ Petition No. 1589 of 2007, J.G. Reddy, for the Respondent

Judgement

R.G. Ketkar, J.—All these petitions challenge the order dated February 6, 2007 passed by the Chief Executive Officer, Slum Rehabilitation Authority (for short "SRA"). The controversy in all these petitions relates to the grant of Letter of Intent (for short "LOI") for implementation of Slum Rehabilitation Scheme (for short "Scheme") on a plot bearing CTS Nos. 439 to 442, 443, 444 (part), 447, 451, 452, 453A and 454A situate at village Vileparle, Taluka Andheri, Mumbai Suburban District (for short the "said plot") of the proposed Premnagar Cooperative Housing Society (for short "Society"), therefore all these petitions can be conveniently disposed of by a common order. Writ petition No. 1036 of 2007 is instituted by M/s. Sigtia Constructions Private Limited (for short "M/s. Sigtia"). Writ petition No. 1075 of 2007 is instituted by Mr. Ramchandra Mahadev Jagtap and nine Others (for short hereinafter referred to as "Jagtap and Ors.") who are eligible slum dwellers and are residents of the said plot. Writ Petition No. 1589 of 2007 is instituted by M/s. Keya Developers and Construction Private Limited (for short hereinafter referred to as "M/s. Keya Developers"). Writ Petition No. 2720 of 2008 is instituted by Mr. Chandrakant Sitaram Mane (hereinafter referred to as "Mane"), challenging the order dated February 6, 2007 passed by the SRA, as also for directions to the SRA to choose one of the two competing builders and developers in compliance with the directions of the Apex Court in its order dated November 7, 2006. It is interesting to note that Mr. Mane did not implead M/s. Sigtia and M/s. Keya Developers as also the Society in the petition.

2. The controversy in all these petitions arise in the following circumstances:

Under the General Body Resolution dated October 19, 2000 the proposed society appointed M/s. Sigtia as developer and Mr. Bipin Khatri as an Architect for rehabilitation of the slum known as Premnagar situate at Vile Parle on the said plot. The said plot belongs to the Municipal Corporation of Greater Mumbai (MCGM). By notification dated May 24, 2001 published in the Maharashtra Government Gazette on August 2, 2001, the Additional Collector (Encroachment) and the Competent Authority, Mumbai Suburban District declared Premnagar Cooperative Housing Society (proposed), S.V. Road, Vileparle (W), Mumbai as slum area u/s 4 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short hereinafter referred to as "Act"). The general body of the Society passed a resolution on September 8, 2001 noting that Mr. Vinodbhai Sigtia (Director of M/s. Sigtia) took efforts in declaring their area as slum area and the Resolution Nos. 5 and 6 of October 19, 2000 were reaffirmed. Agreement was executed between the slum dwellers on the suit plot being the party of one part and M/s. Sigtia being the party of other part on September 15, 2001. Clause 4 of the Agreement deals with the "Appointment" and reads thus:

Subject to acceptance by the SRA, the party of other part will be treated as a developer to develop the property as per SRA.

Clause 5 thereof provides for "Consent" and reads thus:

Slum-dwellers hereby agree and give consent to participate in SRA as per DCR (10), Appendix IV.

Clause 6(i) casts obligation on developer to appoint suitable architect. Clause 7(i) casts obligation on the slum dwellers to confirm that they have not entered into any writing or arrangement for Slum Rehabilitation Scheme of the said slum, with any other person except with the party of the other part. Clause 12 thereof states that the agreement is an irrevocable consent given by the slum dwellers in favour of the party of the other part for implementation of the SRS and an Agreement and consent to participate in SRS.

3. It is the case of M/s. Sigtia that their Architect submitted proposal alongwith Annexure I, II and III complete in all respects to the SRA on September 11, 2002. After ensuring the completeness of the proposal submitted, the computerised File Number is allotted to the Scheme. The Assistant Engineer, SRA, found M/s. Sigtia's proposal in order and accordingly gave computerised No. KW/ MCGM/0008/20021003 and directed payment of scrutiny fees for Annexures I, II and III as required by Clause 11 of the Guidelines. It is the case of M/s. Sigtia that the proposal submitted by them was accepted in terms of Clause 11 thereof and accordingly scrutiny fee of Rs. 19,750/was paid by them. On October 10, 2002, the draft Annexure II was forwarded by the Deputy Collector, SRA, to the Additional Collector (Encroachment), who is designated as a sole competent authority for deciding eligibility for verification and certification of Annexure II. The affidavit cum declaration was given by individual slum dwellers with their spouse on November 26, 2002 declaring that they will give cooperation to the Architect and M/s. Sigtia. Individual tripartite agreement was entered into between the Society, M/s. Sigtia and individual slum dwellers with their spouse on November 26, 2002. Clause (xv) of the said agreement recorded that for executing the work, an irrevocable power of attorney was given to M/s. Sigtia. The Additional Collector (Encroachment), 2nd Respondent herein after visiting the site and verifying the documents, certified Annexure II wherein it is noted that out of 565 protected/ eligible structures, 438 slum dwellers had given consent to M/s. Sigtia for the scheme which was more than 77% as against required 70% as per Clause 2 of the Guidelines. On February 24, 2004 the Finance Controller of SRA approved M/s. Sigtia's Annexure III and certified that they are financially sound for implementing the Scheme. On February 26, 2004 the society gave an undertaking on solemn affirmation that it is satisfied with the performance of M/s. Sigtia and they would continue with them and the Architect till the project is completed. The Society executed irrevocable power of attorney in favour of M/s. Sigtia confirming earlier irrevocable power of attorney dated April 23, 2002. It recorded that due to sustained efforts of the Directors of M/s. Sigtia, a lot of progress was achieved and the Society was awaiting issuance of LOI. While the SRA was in process of issuing the LOI to M/s. Sigtia, Mr. Jagtap and Ors. instituted Writ Petition No. 988 of 2004 in this Court on March 29, 2004, questioning among others (i) the election of the office bearers of the Society, (ii) Annexure II issued in favour of the Society, (iii) 70% consent of Slum dwellers in

favour of M/s. Sigtia and (iv) Technical and financial competence of M/s. Sigtia.

4. The SRA issued supplementary Annexure II on April 16, 2004 excluding portion of land covered by the Playground Reservation and hutments situate thereon from the earlier Annexure II, in view of the orders passed by this Court in the proceedings restraining the utilisation of green spaces for SRA projects. As per this supplementary Annexure II, there are total 943 structures on the said plot of which 442 are censused/protected. These are eligible structures for allotment under the Scheme. It is the case of M/s. Sigtia that a scrutiny report was prepared by the Executive Engineer, SRA on May 7, 2004 enclosing therewith draft LOI and was submitted to CEO, SRA for his approval. Copy of this was marked to Chief Officer, Maharashtra Housing and Area Development Authority (MHADA), among other officers. In Writ petition No. 988 of 2004 by order dated July 1, 2004 this Court directed the SRA to submit the report regarding financial and technical capability of M/s. Sigtia for implementing the Scheme. On July 28, 2004 the CEO of SRA, after hearing all the parties in the said petition, submitted a report to this Court. In the said report it was concluded that M/s. Sigtia has financial and technical expertise and has complied with both conditions of Annexure III. Report also recorded submissions made by the Advocate on behalf of the Society before the SRA that the Society was satisfied with the progress of the project undertaken by M/s. Sigtia. On August 21, 2004, the Executive Engineer III of SRA resubmitted the draft LOI to the CEO of the SRA for his approval after the Chief Minister's stay order was vacated. On September 15, 2004 the CEO made endorsement to the following effect:

The High Court had asked CEO SRA for certain opinion. We are aware that the Scheme is subjudice. It will be better if we await the judgment of the Hon'ble High Court.

5. By judgment and order dated March 11, 2005 this Court finally disposed of Writ Petition No. 988 of 2004. This Court recorded submissions made on behalf of the petitioners therein to the effect that the Committee Members of the Society in collusion with M/s. Sigtia defrauded the residents of the Society; that the office bearers of the Society were not elected by the General Body; that no General Body meetings were held by the Society, nor the election of the Managing Committee was held. The Court also noted the submissions made on behalf of the petitioners therein that 70% of the eligible slum dwellers have not supported the Scheme. On the other hand, on behalf of the Society it was submitted that it had taken all the necessary precaution and after considerable efforts ultimately approached the SRA and are now waiting anxiously for allotment of tenements. This Court recorded that the SRA was satisfied that the requisite 70% occupiers of the slum area have come forward and reposed confidence in M/s. Sigtia. Even the apprehension raised by the petitioners therein about the capacity and capability of M/s. Sigtia was taken care of by calling upon the CEO of SRA to once again verify and submit report. The Court also directed M/s. Sigtia to deposit an amount of Rs. 2.50 crores as Interest Free Security

Deposit so as to ensure the implementation of the Scheme. Thus all the requisite measures for protecting the interest of the eligible slum dwellers were taken and ultimately this Court dismissed the writ petition.

6. As noted earlier, on September 15, 2004 the CEO of SRA made an endorsement that since the matter is subjudice before this Court they would await the judgment. Even after the disposal of the writ petition No. 988 of 2004 on March 11, 2005, the SRA did not issue the LOI though all the requisite formalities were completed. Out of nine petitioners in Writ Petition No. 988 of 2004, Nazir Khan filed Special Leave Petition, being SLP(C) No. 11318 of 2005 before the Apex Court on May 13, 2005 against the decision of this Court dated March 11, 2005 in Writ Petition No. 988 of 2004. On July 18, 2005 the Apex Court issued notice and granted stay to this Court's order dated March 11, 2005. The said SLP was withdrawn on September 26, 2005. Four other petitioners out of the petitioners in Writ Petition No. 988 of 2004 filed SLP No. 19848 of 2005 and obtained interim stay on September 19, 2005 from the Apex Court. In view of this stay order, M/s. Sigtia could not take any further steps towards the implementation of the Scheme. It appears that in that SLP the Society filed an application being I.A. No. 5 praying for issuance of direction to the SRA to consider and sanction the Scheme prepared by the Society alongwith M/s. Keya Developers. It further appears that the said I.A. was dismissed. The SRA had filed affidavit in SLP No. 19848 of 2005 on January 4, 2006 interalia contending that it had not taken cognizance of letter dated June 6, 2005 of the Society alleging that the development agreement in favour of M/s. Sigtia was terminated. Eventually, SLP No. 19848 of 2005 was dismissed as withdrawn on April 13, 2006.

7. During pendency of SLP 19848 of 2005, on behalf of the Society notices dated April 26, 2005 and June 6, 2005 purporting to revoke the development agreement and the power of attorney executed in favour of M/s. Sigtia were given. This was replied by M/s. Sigtia on June 15, 2005 questioning the authority of the persons purporting to terminate and revoke the said development agreement and power of attorney. Since the SRA was not taking further steps of issuance of the LOI M/s. Sigtia made a representation to the State Government on June 10, 2005. Before the Principal Secretary of the Housing Department, Government of Maharashtra, the Chief Executive Officer of the SRA, representatives of the Society and the representatives of M/s. Sigtia among others were present. After carefully considering the documents presented before him and after hearing all the parties, the Principal Secretary passed an order on June 20, 2005 directing the SRA to issue LOI with further directions to the CEO of SRA as also M/s. Sigtia to ensure compliance of the order of this Court dated March 11, 2005 passed in Writ Petition No. 988 of 2004. This order is not questioned by anybody till date.

8. As noted earlier, the second SLP was dismissed as withdrawn on April 13, 2006. After dismissal of the SLP and vacation of the stay, M/s. Sigtia wrote to the

SRA on April 25, 2006 offering to deposit Rs. 2.5 crores as Interest Free Security Deposit as directed by this Court on March 11, 2005. M/s. Sigtia requested the SRA to issue LOI. It is at this stage the Writ Petition No. 1277 of 2006 was filed in this Court by Jagtap and nine others against the CEO of SRA being the Respondent No. 1, and the Society being the Respondent No. 2, M/s. Keya Developers being the Respondent No. 3 and the MCGM being the Respondent No. 4. M/s. Sigtia were not made party in this proceeding. One of the prayers in that petition was to the following effect:

(a) to issue writ of certiorari or any other writ, order/direction in the nature of certiorari against the Respondent No. 1 (CEO of SRA) to consider the proposal submitted by Respondent No. 3 (M/s. Keya Developers) and to issue letter of intent (LOI) for redevelopment of the said property in favour of Respondent No. 3.

9. It is relevant to note here that before the Apex Court the SRA had made an affidavit on January 4, 2006 in SLP No. 19848 of 2005 solemnly affirming that it had not taken cognizance of letter dated June 6, 2005 issued by the Society purporting to terminate the development agreement in favour of M/s. Sigtia. The SRA however did not point out before this Court that M/s. Sigtia were necessary party. It further appears that the SRA also did not file any affidavit in that petition. On May 4, 2006 this Court (F.I. Rebello and Anoop V. Mohta, JJ.) disposed of the said writ petition by passing order to the following effect:

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

10. We must record the consensus among all the learned Counsel appearing for the parties that the judgment referred in the above order, is the judgment dated March 11, 2005 passed by this Court in Writ Petition No. 988 of 2004. Even otherwise, this fact becomes abundantly clear from the perusal of the order of the Hon'ble Apex Court dated November 7, 2006.

11. Jagtap and Ors. preferred SLP No. 10281 of 2006 before the Apex Court against the order dated May 4, 2006 passed by this Court in Writ Petition No. 1277 of 2006. Even before the Apex Court M/s. Sigtia were not made party and once again it appears that the SRA did not point out before the Apex Court that M/s. Sigtia were necessary party particularly when the order dated May 4, 2006 passed by this Court in Writ Petition No. 1277 of 2006 required SRA to call the parties in terms of the judgment of this Court and after hearing the parties to dispose of the application of M/s. Keya Developers. Even the SRA did not point out to the Apex Court that there was no proposal of M/s. Keya Developers

complete in all respects pending with the SRA. On June 27, 2006 the Apex Court directed the SRA to issue LOI in favour of M/s. Keya Developers. In the order the Apex Court recorded grievance of the petitioner before it that despite no legal impediment, SRA was not issuing the LOI in favour of M/s. Keya Developers despite the request made by the Society. According to the petitioners, before the Apex Court, it was merely giving replacement of previous developers M/s. Sigtia who had not even started the project even after almost eight years and whose agreement with the Society had come to an end by efflux of time.

12. When M/s. Sigtia acquired knowledge of the Apex Court order dated June 27, 2006 it made an application on June 30, 2006 for recalling of the said order and also an application for impleadment in the SLP No. 10281 of 2006. In this application the SRA made an affidavit on July 7, 2006 reiterating that it had not taken cognizance of the letters dated April 27, 2005 and June 6, 2005 purporting to terminate M/s. Sigtia's appointment as developers. By judgment and order dated November 7, 2006 the Apex Court recalled its earlier order dated June 27, 2006. It was held that M/s. Sigtia was necessary party to Writ Petition No. 1277 of 2006 as well as SLP No. 10281 of 2006. The Apex Court recorded that the order dated June 20, 2005 passed by the Principal Secretary, Home Department, was not challenged by anyone before any forum. The order dated March 11, 2005 passed by this Court in Writ Petition No. 988 of 2004 had attained finality and that as on April 13, 2006 there was no proposal of M/s. Keya Developers before the SRA. The Apex Court further recorded the submission that the development agreement in favour of M/s. Sigtia came to an end on April 25, 2005 by efflux of time. In this context, it was observed that Clause 2.2 of the development agreement must be read as a whole and when so read, it would be clear that the developer (M/s. Sigtia) was to start the actual construction after issuance of the commencement certificate by the authority. Therefore, the period of three years must be construed to begin from the date when the commencement certificate is issued and not from the date of the execution of the agreement. The Apex Court also noted that even the SRA to whom letter dated June 6, 2005 was addressed, in its counter affidavit filed before the Apex Court in the said proceeding stated that they did not take notice of the said letter of termination as the letter was not supported by the relevant resolution of the Society. Eventually, the Apex Court passed order directing the SRA to call two developers viz. M/s. Keya and M/s. Sigtia, as directed by the order in Writ Petition 988 of 2004 dated March 11, 2005 and the order dated May 4, 2006 in Writ Petition No. 1277 of 2006, and disposed off their applications for issuing the LOI and to pass appropriate orders in accordance with the Act and also strictly following the procedure for submission, processing and approval of the Scheme and to award LOI to the developer who satisfies the required qualifications, conditions, regulations and the provisions of the Act. The SRA was also directed to consider as to whether the guidelines and other conditions were fulfilled by the slum dwellers/the society/as well as by the developers and issue notice to the society also and hear them and pass appropriate speaking order within three

months from the date of passing of that order.

13. Pursuant the SRA heard all the concerned parties and passed the impugned order on February 6, 2007. In the order the SRA recorded findings to the following effect:

(i) By resolution dated May 29, 2005 passed by the General Body of the Society, M/s. Keya Developers were proposed as the new developers for implementation of the Scheme. However, records of the SRA indicate that M/s. Keya Developers had submitted their proposal with the certified Annexure II which had also been submitted earlier by M/s. Sigtia Developers. In the absence of certification of M/s. Keya Developers Annexure II by the Competent Authority which was required to be submitted by M/s. Keya Developers to the SRA alongwith their proposal, it would not be possible to conclusively establish that M/s. Keya Developers indeed enjoyed support of more than 70% of the eligible slum dwellers of the Society.

(ii) The validity of the General Body Resolution dated May 29, 2005 of the Society remains to be finally decided since the proceedings are pending before this Court,

(iii) In view of the termination of development agreement by the Society on account of efflux of time, both the contending developers vis. /s. Sigtia Developers and M/s. Keya Developers had not fulfilled necessary and sufficient conditions to be declared as competent developer since as of date they had not enjoyed undisputed support of more than 70% of eligible slum dwellers by way of both (a) General Body Resolution of the Society which is formed for identification of the competent developer, (b) Annexure II independently certified by the Competent Authority after observations of due procedure and on verification of individual consent cum agreement signed by the eligible slum dwellers.

14. On these among other grounds, SRA ultimately held that in the given circumstances identification of the competent developer can be done diligently only through verification of the individual consent cum agreement signed by the eligible slum dwellers followed by fresh certification of Annexure II by the Competent Authority so as to conclusively establish which developer enjoys the actual support of more than 70% of the eligible slum dwellers of the Society.

15. We have heard Mr. Aspi Chinoy, learned Senior Counsel appearing on behalf of the Petitioners in Writ Petition No. 1036 of 2007 filed by M/s. Sigtia. We have also heard Mr. Vinod Bobde, learned Senior Counsel appearing on behalf of M/s. Sigtia Developers being the Respondent No. 3 in Writ Petition No. 1589 of 2007 filed by M/s. Keya Developers, and Respondent No. 4 in Writ Petition No. 1075 of 2007 filed by Jagtap and Others. We have also heard Mr. Janak Dwarkadas, learned Senior Counsel appearing on behalf of M/s. Keya Developers, Mr. Rajeev Narulla, learned Counsel on behalf of the Society, Mr. R.M. Kadam, learned Advocate General on behalf of the SRA, Mr. F. Devitre, learned Senior Counsel appearing on behalf of Jagtap and Ors., and Mr. S.U. Kamdar, learned Senior

Counsel on behalf of Mr. Mane.

16. In support of Writ Petition No. 1036 of 2007 filed by M/s. Sigtia Developers, Mr. Chinoy, learned Senior Counsel submitted that the SRA exceeded its jurisdiction both in law as well as under the scope of the authority delineated by the order of the Apex Court dated November 7, 2006. The order of the SRA is totally contrary to this Court's order dated March 11, 2005 as also contrary to the Apex Court's orders dated April 13, 2006 and November 7, 2006. He submitted that it was not open to the SRA to find out as on date who has the support of 70% of the eligible slum dwellers. In his submission, that exercise was already done and M/s. Sigtia had fulfilled all the conditions and had submitted proposal complete in all respects with Annexure I, II, III. Even after disposal of W.P. No. 988 of 2004 on March 11, 2005 the SRA ought to have issued LOI when the draft LOI was already prepared and the CEO was awaiting judgment of this Court in W.P. No. 988 of 2004. It was submitted it was not open to the SRA now to start denovo from the stage of Annexure II which was duly certified as far back as on January 23, 2003. Annexure III was duly approved by the Finance Controller of the SRA certifying that M/s. Sigtia is financially sound for implementing the Scheme. That apart, pursuant to this Court's order in W.P. No. 988 of 2004 the CEO of the SRA submitted report on January 28, 2004 once again concluding the financial and technical expertise of M/s. Sigtia and that M/s. Sigtia Developers had complied with both the conditions of Annexure III. The filing of second Writ Petition No. 1277 of 2006 was with a mala fide intention and really speaking the petitioners therein misled this Court and also the Apex Court. He submitted that now even the Apex Court recorded that M/s. Sigtia Developers were necessary party in Writ Petition No. 1277 of 2006 as also necessary party to the SLP No. 10281 of 2006. He further submitted that M/s. Keya Developers did not submit requisite proposal complete in all respects before the SRA so that their claim could be considered by the SRA. Even in the order dated November 7, 2006 the Apex Court recorded that as on April 13, 2006 M/s. Keya Developers did not submit proposal to the SRA. He emphasised that when the SRA was about to issue LOI in favour of M/s. Sigtia Writ Petition No. 988 of 2004 was filed in this Court. That was dismissed on March 11, 2005 and eventually after dismissal of SLP, the said judgment attained finality. When M/s. Sigtia were about to proceed further with the implementation of the Scheme, another Writ Petition was filed being Writ Petition No. 1277 of 2006 behind the back of M/s. Sigtia Developers. In those proceedings, the SRA did not point out to this Court or to the Apex Court that M/s. Sigtia Developers were necessary party. This is more so when the SRA did not take cognizance of the letters purporting to terminate the development agreement of M/s. Sigtia Developers. In his submission, all this litigation could have been avoided had the SRA pointed out before this Court in Writ Petition No. 1277 of 2006 that M/s. Sigtia were necessary party. Mr. Chinoy was at pains to point out that SRA and M/s. Keya Developers are equally responsible for creation of litigation. He further submitted that considering the judgment of this Court dated March 11, 2005 in Writ Petition

No. 988 of 2004 as also the order dated May 4, 2006 in Writ Petition No. 1277 of 2006 and the judgment of the Apex Court dated November 7, 2006 in the I.A. in SLP No. 10281 of 2006 the SRA has to consider the proposal of M/s. Sigtia Developers, after considering the objections of M/s. Keya Developers, the Society, Mr. Jagtap and Ors., and Mr. Mane. He submitted that since there is no proposal of M/s. Keya Developers in the eyes of law, there is no question of SRA considering their proposal.

17. Mr. Bobde, learned Senior Counsel while supporting the submissions advanced by Mr. Chinoy, invited our attention to the guidelines framed by SRA. He submitted that M/s. Sigtia Developers carried out survey, collected information of eligible slum dwellers and obtained certification from the Additional Collector (Enc.) about the eligibility of the slum dwellers. Once the Society appointed M/s. Sigtia Developers to implement the Scheme who in turn appointed Architect in consultation with the Society, the role of the Society becomes minimal. The developer so chosen has to act as promoter in terms of Guideline No. 6. In terms of Guideline No. 7 the promoter has to enter into the agreement with every individual slum dweller while putting up the slum rehabilitation proposal to the SRA for approval. The Architect appointed by the promoter in consultation with the Society has to prepare Plans as per the DCR 33 (10). As per the Guideline No. 8 it is expected from the Architect to ensure community participation in preparation of the building plans. After completing all the formalities, Annexure I, II and III were submitted by their Architect to the SRA. The designated Engineer of the SRA has to ensure completeness of the proposal submitted and then computerised File Number is allotted to the Scheme which conclusively establishes that the proposal as submitted was complete in all respects. After scrutiny, the computerised No. KW/ MCGM/0008/20021003 was given to the proposal submitted by M/s. Sigtia Developers, whereas in respect of M/s. Keya Developers no such computerised number was allotted signifying that the proposal, if any, submitted by M/s. Keya Developers was not complete in all respects and consequently was not at all the proposal in the eyes of law. He also invited our attention to the Circular No. SRA/4 dated August 27, 1997 and the relevant portion thereof reads thus:

...It has therefore, become necessary, that henceforth, the Developer/Architect will have to submit the proposal to S.R.A., complete in all respects so that they will be in a position to receive LOI/Layout and IOA of 1st (first) rehabilitation building simultaneously. The validity period for all three will be reduced to three months only, during which time he has to comply with the requirements required for starting of work and come forward with the request to obtain C.C. u/s 44 & 45 of M.R. & T.P. Act. Therefore, by direction of C.E.O. (SRA) the proposal which is incomplete for grant of approval of Layout/IOA and approval of 1st rehabilitation building will not be allowed to be submitted and will be accepted only after annexing all the required documents for issue of above approval. A copy of Annexure required for approval of LOI/Layout and IOA is annexed herewith

18. On the basis of the above circular, Mr. Bobde, learned Senior Counsel submitted that the proposal which is incomplete in the grant of approval of the layout/intimation of approval and the approval of the first rehabilitation building is not to be allowed to be submitted. The proposal of M/s. Keya Developers which was incomplete ought not to have been allowed to be submitted by the SRA. He also invited our attention to Appendix IV which are applicable for redevelopment/construction of accommodation for hutment dwellers through the developer/cooperative housing societies, and in particular clauses 1.6, 1.7, 2.2. He submitted that in the instant case, the proposal of M/s. Sigtia stood statutorily approved on March 26, 2004 in terms of Clause 2.2 thereof, which reads thus:

The approval to the Project shall be given by the Slum Rehabilitation Authority within a period of 30 days from the date of submission of all relevant documents. In the event of a failure by Slum Rehabilitation Authority to do so, the said approval shall be deemed to have been given, provided the Project is in accordance with the provisions in this Appendix.

19. On the other hand, Mr. Janak Dwarkadas, learned Senior Counsel submitted that the Society had legally terminated the development agreement executed by the Society in favour of M/s. Sigtia. The General Body of the Society had passed a resolution appointing M/s. Keya Developers as a promoter who in turn, in consultation with the Society appointed Architect. M/s. Keya Developers has necessary support of 70% eligible slum dwellers of the Society. He submitted that M/s. Keya Developers has entered into an agreement with the individual slum dwellers and has also necessary Annexure II duly certified by the Competent Authority viz. the Additional Collector (Enc). He submitted that M/s. Keya Developers had submitted a proposal to the SRA as would be evident from the reply from SRA on the query raised under the Right to Information Act to the effect that M/s. Keya Developers had submitted proposal with SRA. He therefore submitted that in terms of the orders of this Court dated March 11, 2005 and May 4, 2006 and the order of the Apex Court dated November 7, 2006 the SRA is required to consider the proposal of M/s. Keya Developers as also the proposal of M/s. Sigtia. He also submits that the impugned order dated February 6, 2007 passed by the SRA deserves to be quashed and set aside with the direction to the SRA to consider the proposals in terms of those orders.

20. Mr. Rajeev Narulla, learned Counsel for the Society has supported the submissions advanced by Mr. Janak Dwarkadas and contended that the Society has passed valid resolution appointing M/s. Keya Developers as promoter after terminating the development agreement executed in favour of M/s. Sigtia. Mr. F. Devitre, learned Senior Counsel appearing of Mr. Jagtap and Ors. and Mr. Kamdar, learned Senior Counsel appearing for Mr. Mane submitted that the impugned order dated February 6, 2007 passed by the SRA deserves to be quashed and set aside.

21. During the course of hearing, learned Advocate General conceded before us that the proposal of M/s. Keya Developers is not complete in all respects. In view

of the contention raised by M/s. Keya Developers that they have submitted proposal to the SRA and the contention of M/s. Sigtia that no such proposal is submitted by M/s. Keya Developers, we directed the learned Counsel for the SRA to produce the original record for our perusal. We have ourselves perused the original record and find that under covering letter dated July 16, 2005 addressed by Mr. Anil Chavda, Architect appointed by M/s. Keya Developers, a proposal for redevelopment of the said plot was submitted, and we find that alongwith that proposal no agreements entered into between M/s. Keya Developers and the individual slum dwellers are enclosed. Even in the impugned order the SRA has observed that M/s. Keya Developers has submitted their proposal with certified Annexure II which was also submitted by M/s. Sigtia. In other words the self same Annexure II of M/s. Sigtia Developers is utilised by M/s. Keya Developers. Considering the Circular dated August 27, 1997 extracted hereinabove, the SRA ought not to have accepted the incomplete proposal of M/s. Keya Developers. Even the Apex Court in the order dated November 7, 2006 recorded that as on April 13, 2006 M/s. Keya Developers had not submitted a proposal. After satisfying ourselves, we find that as on date the proposal of M/s. Keya Developers is not complete in all respects and cannot be treated as a proposal in the eyes of law. We emphasis this fact as in our considered opinion the parties to Writ Petition No. 1277 of 2006 misled this Court in obtaining the order on May 4, 2006. In fact the SRA being the statutory authority ought to have pointed out to this Court that the prayer made in that petition could not have been entertained in the absence of proposal of M/s. Keya Developers. We are further of the considered opinion that even the Apex Court was misled by the parties before it when it passed the order on June 27, 2006 in SLP No. 10281 of 2006 directing issuance of LOI to M/s. Keya Developers. The entire litigation from the stage of Writ Petition No. 1277 of 2006 onwards could have been avoided had the SRA brought these facts before the Court. We are totally disappointed with the manner in which the SRA has conducted itself before this Court in Writ Petition No. 1277 of 2006 and also before the Apex Court in SLP 10281 of 2006. The litigation from Writ Petition No. 1277 of 2006 onwards is a creation of SRA.

22. The procedure for Submission, Processing and Approval of Slum Rehabilitation Schemes has been laid down by the State Government. Clause (1) of this Scheme reads as under:

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

Perusal of the above clause shows that the slum dwellers whose names appear in the electoral rolls prepared with reference to the date as on January 1, 1995 or a date prior thereto, and who are actual occupants of the hutments are eligible for the Slum Rehabilitation Scheme.

23. Clause (2) reads as under:

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

- (a) Resolution electing a chief promoter.
- (b) Resolution giving the chief promoter authority to apply for reservation of name for cooperative housing society
- (c) To collect share capital (Rs. 50/per member for slum societies) and Rs. 1/as entrance fee and to open account in Mumbai District Central Cooperative/Maharashtra State Cooperative Bank Ltd. (any branch).

Perusal of Clause (2) shows that at least 70% of such eligible slum dwellers have to express their willingness to join Slum Rehabilitation Scheme and have to come together to form a cooperative housing society and all the slum dwellers have to pass a resolution and elect a Chief Promoter. Before amendment of the guidelines by Circular dated August 27, 1997 a duty was cast on the Chief Promoter, officer bearers and the members of the proposed society to collect documents in relation to the title of the land on which the slum is situate, as also the information about the structure and the slum dwellers and this information has to be filled in the form, Annexure II. Annexure II gives details of the land occupied by the slum dwellers, number of and the type of structures such as residential, industrial, commercial etc. and the list of eligible and illegible occupants and the consent of slum dwellers to join the Scheme. By Circular dated August 27, 1997 this procedure has been changed and now even the Architect or the Developer can submit Annexure II to the Competent Authority. The relevant portion of the Circular dated August 27, 1997 reads as under:

In order to facilitate the disposal it has also been decided Architect/Developer or Society hereby may submit Annexure II in duplicate, as prepared by them in the prescribed proforma signed by Owner/Developer/C.P/N.G.O., a copy of which will be forwarded to the Competent Authority who issues Annexure II for getting it certified. The proposal will be scrutinized on the basis of Annexure-II submitted by the Architect. However, approval will be granted only after receipt of certified Annexure-II from the Competent Authority.

24. As a result of this amendment of August 27, 1997 Clause (4) of the Scheme has also been modified and the relevant portion of that reads as under:

As a simplification measure, this procedure is now discontinued and Annexure-II format is now required to be filled up by the promoter/cooperative housing society itself for submitting building proposal to SRA, so that the scrutiny of the proposal and certification of Annexure-II can start simultaneously. Annexure-II needs to be submitted in duplicate. As a measure of further simplification, Additional Collector (Encroachment) is being designated as the sole Competent

Authority for deciding eligibility and for taking eviction action against no participants in slum rehabilitation scheme.

Thus, now Annexure II can be submitted by the Promoter i.e. Developer who has been appointed by the Society and the power to scrutinize that information contained in Annexure II is now conferred on the Additional Collector (Encroachment) and he is the sole Competent Authority to hold that enquiry.

25. In the present case, Annexure II was submitted by the Architect of M/s. Sigtia. The Additional Collector after scrutinizing the application certified Annexure II submitted by the Architect of M/s. Sigtia. Perusal of Clause (7) of the Scheme shows that the Developer/promoter who is chosen by the Society has to enter into agreement with every eligible slum dweller while putting up the slum rehabilitation proposal before the Slum Rehabilitation Authority for approval. Now, on reading of the Scheme as amended in 1997 the position that emerges is this:

(i) 70% of the eligible slum dwellers come together and decide to form a Cooperative Society. They nominate one of them as Chief Promoter. The proposed society, in case it decides to get slum developed through a Developer, they identify the Developer;

(ii) The Developer so nominated enters into an agreement with every eligible slum dwellers;

(iii) The Developer in consultation with the proposed Cooperative Housing Society of the slum dwellers, prepares a plan for development of the slum area as per Development Control Regulation 33 (10) and nominates Architect;

(iv) This Architect or the Developer/promoter himself collects the information required to be included in Annexure I (as per Clause 9 of the Scheme Annexure I gives details about the ownership of land, details of plot area, details of existing hutments and their type, computation of tenement density, extent and type of reservations, amenities, FSI available, number of tenements to be constructed including calculation of TDR etc.), and Annexure II.

(v) Power to scrutinize the information contained in Annexures I and II is vested solely in the Additional Collector (Encroachment) who scrutinizes Annexure I and II;

(vi) Power to scrutinize Annexure III is with the Slum Rehabilitation Authority. So far as contents of Annexure III are concerned, it is Rule 10 of the Scheme which is relevant, which reads as under:

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

(vii) Financial capability of the Promoter/Developer is to be certified by the Slum Rehabilitation Authority and it is only thereafter that the stage of issuing the

Letter of Intent comes.

26. In so far as present case is concerned, it is common ground that so far as M/s. Sigtia is concerned, Annexure I, II and III submitted by them have been duly scrutinized and certified. A challenge was raised after scrutiny of Annexure III in this Court by filing a Writ Petition No. 988 of 2004. That petition has been dismissed. Therefore, as a consequence thereof the Slum Rehabilitation Authority should have proceeded to consider the issuance of Letter of Intent. Because there was delay on the part of the SRA in issuing the Letter of Intent the Government was approached and it is an admitted position that the Government has issued a direction after hearing the Society and the Slum Rehabilitation Authority to issue the Letter of Intent in favour of M/s. Sigtia. That order of the State Government has not been challenged by anybody till this date. Even in the order of the Supreme Court the Supreme Court has also noted that, that order holds the field. What is pertinent to be noted is that the SRA in its order which is impugned in the petition does not even refer to the order of the State Government directing the SRA to issue Letter of Intent in favour of M/s. Sigtia. In our opinion, the order of the State Government which holds the filed was a relevant document, specially when pursuant to the order of the Supreme Court the SRA is considering the question whether the Letter of Intent is to be issued in favour of M/s. Sigtia or not.

27. So far as judgment of the Supreme Court dated November 7, 2006 is concerned, a careful reading of the judgment reveals that the Supreme Court has recorded following findings:

(i) That the agreement between M/s. Sigtia and the Society has not come to end by efflux of time on April 25, 2005;

(ii) That the SRA stated before the Supreme Court that it did not take any notice of letters of the Society terminating the agreement with M/s. Sigtia dated April 25, 2005 and June 6, 2005;

(iii) That the order dated March 11, 2005 passed by this Court in Writ Petition No. 988 of 2004 attained finality;

(iv) Till March 13, 2006 the SRA did not have before it any proposal submitted by M/s. Keya Developers;

(v) That M/s. Sigtia was necessary party to the writ petition being W.P. No. 1277 of 2006 before this Court and in the SLP No. 10281 of 2006 before the Apex Court;

(vi) That it is for the SRA to decide whether the alleged termination of the agreement between the proposed Society and M/s. Sigtia has any effect on the entitlement or otherwise of the Letter of Intent to M/s. Sigtia;

(vii) That at the hearings held before the Principal Secretary, Government of Maharashtra on June 15, 2005, the representatives of the proposed Society did

not say anything about the purported termination of the agreement between M/s. Sigtia and the proposed Society;

(viii) That the order of the Principal Secretary, Government of Maharashtra directing issuance of Letter of Intent to M/s. Sigtia has gone unchallenged;

(ix) That the Supreme Court has directed the SRA to call M/s. Sigtia and M/s. Keya Developers for hearing on the question as to whom the Letter of Intent is to be issued in terms of the order of this Court dated March 11, 2005 passed in Writ Petition No. 988 of 2004 and the order dated May 4, 2006 passed in Writ Petition No. 1277 of 2006.

28. So far as the order of this Court in Writ Petition No. 988 of 2004 is concerned, as per that order, the scrutiny of Annexures I, II and III of the proposal submitted by M/s. Sigtia was over, and the Slum Rehabilitating Authority was to consider the question of issuance of Letter of Intent in favour of M/s. Sigtia. So far as order dated May 4, 2006 in Writ Petition No. 1277 of 2006 is concerned, that order reads as under:

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

29. Perusal of the above quoted order makes it clear that by that order the Respondent No. 1 in that petition i.e. the SRA has been directed to call the parties in terms of the judgment of this Court viz. judgment of this Court dated March 11, 2005 in Writ Petition No. 988 of 2004, and after hearing the parties to dispose of the application of Respondent No. 2 in that petition in accordance with law. The Respondent No. 2 in that petition was the proposed Society. Thus it becomes necessary to find out what was the direction contained in the order of the High Court dated March 11, 2005 passed in Writ Petition No. 988 of 2004. In this regard, in our opinion, Paragraph No. 20 of that order is relevant, which reads as under:

In the light of the aforesaid discussion, in our view, it is not necessary to either quash and set aside the scheme or issue further directions as sought in the petition. Needless to state that the scheme is presently at primary stage. Final approvals have not been granted on the own showing of SRA. If SRA decides not to issue LOI in favour of Respondent No. 7, it will always be open for the parties to submit a fresh development scheme. For the present, we do not find that this is a fit case for interference with the tentative decision of the SRA.

30. Perusal of the above paragraph 20 shows that after the judgment of the High

Court, the SRA was to consider the question of granting approval to the Scheme pending before the SRA. The Scheme pending at that time was the Scheme submitted by M/s. Sigtia, and the question of submission of another Scheme would have arisen if the SRA had decided not to issue Letter of Intent in favour of M/s. Sigtia. It is thus clear that the first issue that the SRA was to consider is whether M/s. Sigtia is entitled to issuance of Letter of Intent. No doubt as per the order of the Supreme Court M/s. Keya Developers will also have to be heard on that issue, but there is no question of the issue whether M/s. Keya Developers is entitled to Letter of Intent being considered unless and until the SRA comes to the conclusion that M/s. Sigtia is not entitled to get the Letter of Intent. In other words, the SRA will have to first hear the parties on the issue whether M/s. Sigtia is entitled to Letter of Intent. If the SRA comes to the conclusion that M/s. Sigtia is entitled to Letter of Intent, then that will be the end of the matter, and the order of this Court and the order of the Supreme Court will stand complied with. However, in case the SRA comes to the conclusion that M/s. Sigtia is not entitled to issuance of Letter of Intent then it will have to take up the issue whether M/s. Keya Developers is entitled to issuance of Letter of Intent for consideration. The application of M/s. Sigtia will have to be heard and considered first, and it is only thereafter depending on the result of that application, that the application of M/s. Keya Developers can be considered, assuming that M/s. Keya Developers has made any such application because we have recorded a finding above that no complete application submitted by M/s. Keya Developers is on the original record. No doubt, while considering the question whether M/s. Sigtia is entitled to issuance of Letter of Intent, the question whether the agreement in favour of M/s. Sigtia has been validly terminated or not will have to be considered.

31. We have to note here that before us it was clearly submitted that in the Scheme which is framed by the State Government the proposed Society does not enter into any agreement with the Developer. The Developer has to enter into the agreement with the eligible individual slum dwellers, and as the agreement between the Society and the Developer is not contemplated there is no question of appointment of the Developer coming to an end because of any resolution passed by the proposed Housing Society. It was also submitted that in the present case M/s. Sigtia has in fact entered into agreement with the eligible individual slum dwellers and it is not anybody's case that those agreements have been terminated by eligible individual slum dwellers. It was also argued that as the eligible individual slum dwellers have entered into the agreement with M/s. Sigtia, unless such slum dwellers terminate the agreement entered into by them with M/s. Sigtia in accordance with law, they cannot enter into similar agreement with any other person. It was also submitted that the proposed Housing Society which is yet to be registered does not exist independently of its members, and therefore, no resolution passed by such body has any validity, unless and until each and every person who have decided to join in the formation of the Society joins in passing the resolution. However, we do not propose to go into these questions because these question can be raised by the parties if they are so

advised before the SRA, and while deciding the question of entitlement of M/s. Sigtia to the issuance of Letter of Intent the SRA will have to decide these issues also.

32. In our opinion, the impugned order dated February 6, 2007 passed by the SRA is unsustainable. The approach of the SRA to find out as on date who has support of 70% eligible slum dwellers is unsustainable. In our opinion, that stage was already over and on record there is a complete proposal of M/s. Sigtia Developers.

33. In our opinion, the impugned order is liable to be quashed and set aside. Accordingly, the impugned order is quashed and set aside. Matter is remanded to the SRA. The SRA to decide the proposal of M/s. Sigtia Developers in terms of the order dated March 11, 2005 passed in Writ Petition No. 988 of 2004 as also the order dated May 4, 2006 passed by this Court in Writ Petition No. 1277 of 2006, and the order dated November 7, 2006 passed by the Apex Court in SLP No. 10281 of 2006, and on the basis of the record as it stands today, as expeditiously as possible, and in any case within a period of three months from today. All contentions of the parties are expressly kept open. The SRA will consider the contentions of the parties and will record reasons and give findings. While considering the proposal of M/s. Sigtia Developers, the SRA will consider the objections of M/s. Keya Developers, as also of the Society, Mr. Jagtap and Ors. and Mr. Mane. If the SRA decides not to issue LOI in favour of M/s. Sigtia Developers, it will be open for the parties to submit fresh development Scheme as observed by this Court in paragraph No. 20 of the judgment and order dated March 11, 2005 in Writ Petition No. 988 of 2004. Rule is made absolute in all the Petitions. However, in the facts and circumstances of these petitions, there shall be no order as to costs.

34. At this stage request is made by the petitioners in Writ Petition Nos. 1075/2007 & 1589/2007 for staying of the operation of this judgment & order. In our opinion, no useful purpose will be served by staying the hearing of the matter by the Slum Rehabilitation Authority. However, as the parties want to approach the Higher Court, it will be appropriate to direct the Slum Rehabilitation Authority not to make its final order for a period of six weeks from today, though it can go on with the hearing of the matter in terms of this judgment.