

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.1688 OF 2016

- | | | |
|----|--|---------------------|
| 1] | M/s. Platinum Realty |] |
| | Through its Partner |] |
| | Mr.Krishnakant Mulik |] |
| | having its Office at G/3, |] |
| | Shantinath Appartment, |] |
| | S.V.Road, Borivali (West), |] |
| | Mumbai – 400 092 |] |
| | |] |
| 2] | M/s. Jaihind SRA Co-operative Society |] |
| | (Proposed), through its Chief Promoter |] |
| | Shri Lahu Dadu Khalse, situated at |] |
| | Survey No.359, CTS No.621, 622 (Pt.), |] |
| | of Village Chembur, Tal. Kurla |] |
| | Dr. Ambedkar Nagar, Old Reti Bundar |] |
| | Pestom Sagar Road No.6, |] |
| | Chembur, Mumbai – 400 089 |]..... Petitioners. |

Versus

- | | | |
|----|-------------------------------------|---|
| 1] | The State of Maharashtra |] |
| | Through its Principal Secretary, |] |
| | Housing & Spl. Establishment Deptt. |] |
| | Mantralaya, Mumbai – 400 023. |] |
| | |] |
| 2] | The High Power Committee-II, |] |
| | Government of Maharashtra |] |
| | Administrative Building, |] |
| | Anant Kanekar Marg, Bandra (East) |] |
| | Mumbai – 400 051 |] |
| | |] |
| 3] | The Chief Executive Officer, |] |
| | Slum Rehabilitation Authority |] |
| | Administrative Building, |] |
| | Anant Kanekar Marg, Bandra (East), |] |
| | Mumbai – 400 051 |] |
| | |] |

- 4] The Addl. Collector,]
 (Encroachment & Removal)]
 Eastern Suburban, Industrial Assurance]
 Building, 1st floor, Churchgate,]
 Mumbai – 400 020]
]
- 5] The Deputy Collector,]
 (Encroachment & Removal),]
 & Competent Authority,]
 10th Road, Near D. K. Sandu Garden,]
 Opp. Axis Bank, Chembur (East),]
 Mumbai – 400 071]
]
- 6] Navbharat SRA Co-operative Housing]
 Society (Proposed), through its Chairman]
 Shri Ashok Yadu Londhe, Chairman]
 situated at Survey No.359, CTS No.621,]
 & Masanvata (Graveyard) of Village]
 Chembur, Tal. Kurla, Dr.Ambedkar Nagar]
 Old. Reti Bunder Road, Chembur,]
 Mumbai – 400 089.]
]
- 7] M/s.Unique Property Enterprises Pvt.Ltd.]
 The Developers, Registered office at 5/3,]
 New Municipal Chawl, Laxmibaug,]
 Sion (West), Mumbai – 400 022]
 Through its Directors,]
]
 (a) Shri Rajendra Dattatram Korde,]
 (b) Smt. Kunda Rajendra Korde.]
 AND its Licensed Surveyor/Architect who]
 is former Assistant Engineer of S.R.A.]
 and Benami Proprietor cum Financer,]
 (c) SHRI. VILAS P KHARCHE,]..... Respondents.

Mr. A .Y. Sakhare, Senior Advocate i/by Mr. U. T. Naik for the Petitioners.
 Mr. P. K. Dhakephalkar, Senior Advocate i/by Mr. J.G.Reddy for the
 Respondent Nos.2 and 3.
 Mr.V. B. Naik, Senior Advocate i/by Mr. S G Surana for the Respondent
 No.6.
 Mr. P. K. Samdani, Senior Advocate i/by Mr. C. N. Gole for the Respondent
 No.7.
 Mr. L. T. Satelkar, AGP, for the Respondent Nos.1, 4, and 5.

**CORAM : R. M. SAVANT &
SMT. SADHANA S JADHAV, JJ.**
DATE : 27th June 2017

JUDGMENT :- (Per R.M.SAVANT, J.)

1 Rule, with the consent of the learned counsel for the parties made returnable forthwith and heard.

2 The writ jurisdiction of this Court is invoked against the order dated 18/02/2016 passed by the High Power Committee by which order the representation/application filed by the Petitioners came to be dismissed.

3 The facts giving rise to the filing of the above Petition can in brief be stated thus :-

The Petitioner No.1 is a Developer and the Petitioner No.2 claims to be a Society of the slum dwellers who have their structures on the land bearing Survey No.359 CTS Nos.621, 622 (Part) of village Chembur, Taluka Kurla, Mumbai. The Petitioner No.2 i.e. the Society of the slum dwellers appointed the Petitioner No.1 as the Developer for construction of the buildings to rehabilitate the slum dwellers by passing a resolution in the meeting held on 10/10/2010. It seems that the Petitioner No.2 entered into a Development Agreement with the Petitioner No.1 on 13/10/2010. The Petitioner No.2 handed over to the Petitioner No.1 the Power of Attorney and the common consent of more than 70% of the slum dwellers as per the

resolution passed in the Extraordinary General Body Meeting of the Petitioner No2 Society. The members of the Petitioner No.2 thereafter it seems executed individual Consent-cum-Agreements in respect of 116 slum dwellers out of 128 members of the Petitioner No.2 Society and handed over the said Agreements between the period 25/10/2010 to 08/11/2010 to the Petitioner No.1. It is after obtaining the consent of more than 70% of the slum dwellers that the Petitioner No.1 initiated a proposal for the implementation of the Slum Rehabilitation Scheme under the aegis of the Maharashtra Slum Areas Improvement, Clearance and Redevelopment Act (for short “the Slum Act”).

4 It seems that prior to the proposal being forwarded by the Petitioners herein, the Respondent No.7 – developer submitted a proposal on 27/01/2011 on behalf of the Respondent No.6 - society, which is also constituted by the slum dwellers on the said plot of land, to the Slum Rehabilitation Authority for slum redevelopment under the Development Control Rule 33(10) of the Development Control Regulations for Greater Mumbai 1991, applicable to the city of Mumbai. Along with the said proposal it seems that the Respondent No.7 also submitted the documents which are required to be submitted in support of the said proposal. The said proposal was based on a Draft Annexure II i.e. the list of the slum dwellers who had their structures on the said plot of land. The said list was in respect of 92 members of the Respondent No.6, out of which the names of 53 members appeared in

the electoral roll as on 01/01/1995. Out of the said 53 names the proposal contained the common consent of about 40 members. The said proposal was submitted by the Respondent No.7 after it was appointed as the Developer for implementing the Slum Rehabilitation Scheme on the plot of land in question. The said proposal of the Respondent No.7 on behalf of the Respondent No.6 was processed by the Slum Rehabilitation Authority (for short "the SRA") as per its practice and the same culminated in the Unique Computerization Number being given to the proposal of the Respondent No.7 on 01/03/2011. This was after the proposal was pre-scrutinized by the Executive Engineer and after carrying out the visit of the site in question. After the Unique Computerization Number was given to the proposal of the Respondent No.7, the Respondent No.7 paid the scrutiny fees. Thereafter the proposal was in depth scrutinized the Respondent No.3 – SRA found that the proposal of the Respondent No.7 was in order and called upon it to pay the development charges. The Respondent No.7 has thereafter paid the development charges and has been issued Letter of Intent (LOI) dated 23/01/2014. The certified Annexure-II in respect of slum-dwellers on the land in question was issued on 29/05/2013. The Deputy Collector and Competent Authority issued a supplementary Annexure-II on 19/05/2016 in respect of the adjoining slum area consisting of 36 structures certifying that out of the said 36 slum-dwellers, 20 slum-dwellers are eligible, and out of the said 20 slum-dwellers, 13 have given written consent to the Respondent Nos.6 and 7. Accordingly the

Respondent No.3 – SRA issued a revised Letter of Intent on 23/01/2014 amalgamating adjoining slum scheme with the slum scheme of the Respondent No.7.

5 Since the proposal of the Petitioners was not accepted by the SRA on the ground that the proposal of the another Society i.e. the Respondent Nos.6 and 7 was already received on 01/03/2011, the Petitioners filed a complaint on 18/04/2011 before the Chief Executive Officer, SRA in respect of the non-compliance of the proposal of the Petitioners and against the acceptance of the alleged incomplete proposal of the Respondent Nos.6 and 7. The said complaint was forwarded by the Chief Executive Officer, SRA to the Deputy Registrar of Co-operative Societies, SRA. The Deputy Registrar of Co-operative Societies, SRA vide letter dated 28/06/2011 informed the Petitioners that since the proposal of the Respondent No.7 on behalf of the Respondent No.6 has already been submitted on 27/01/2011 in respect of the same land, the proposal submitted by the Petitioners could not be accepted till a final decision is taken on the proposal submitted by the Respondent Nos.6 and 7. The Petitioners aggrieved by the said reply dated 28/06/2011 from the Deputy Registrar of Co-operative Societies, SRA, filed an Application before the High Power Committee being Application No.279 of 2011. In the said Application the relief sought was of a direction to the Chief Executive Officer, SRA to accept the proposal of the Petitioners and then consider the same after the final

decision is taken on the first proposal i.e. the proposal of the Respondent Nos.6 and 7. The second relief sought was of setting aside the letter dated 28/06/2011 addressed by the Deputy Registrar of Co-operative Societies, SRA informing the Petitioners that their proposal could not be accepted in view of the receipt of the proposal of the Respondent Nos.6 and 7 prior in point of time. The Application was founded on the ground that the proposal submitted by the Respondent Nos.6 and 7 on 27/01/2011 was not meeting the requirements as stipulated by the guidelines applicable to the Slum Rehabilitation Scheme under Regulation 33(10) of the Development Control Regulations for Greater Mumbai 1991, as the Respondent Nos.6 and 7 did not have the consent of 70% of the slum dwellers and that the consents shown were false and bogus. The Application was also founded on the ground that the Respondent No.7 could not be permitted to improve upon its proposal which was initially defective so as to deprive the Petitioners from submitting their proposal. This was the main plank of challenge in the said Application.

6 Before the High Power Committee, the SRA had submitted its report as well the Respondent Nos.6 and 7 had also filed their replies to the Application filed by the Petitioners. The SRA in its report it seems had set out the procedure followed by it for consideration of the proposal submitted for a Slum Rehabilitation Scheme under Regulation 33(10) of the Development Control Regulations for Greater Mumbai, 1991. In so far as the Respondent

Nos.6 and 7 are concerned, they have justified the submission of the proposal on the ground that the Respondent No.7 had the consent of more than 70% of the slum dwellers who are on the plot of land in question. It was submitted on behalf of the Respondent Nos.6 and 7 that individual agreements have also been entered into with the eligible slum dwellers who constitute 70% of the said eligible slum dwellers and therefore the proposal submitted by the Respondent Nos.6 and 7 was in terms of the guidelines which were applicable to the Slum Rehabilitation Scheme under Regulation 33(10) of the Development Control Regulations for Greater Mumbai, 1991.

7 The High Power Committee considered the said Application filed by the Petitioners. Since the principal allegation against the Respondent No.6 in the said Application was that the Respondent Nos.6 and 7 did not have the consent of 70% of the slum dwellers as per the Draft Annexure-II, the High Power Committee considered the said issue. The High Power Committee observed that on the date when the proposal was submitted the names of 53 slum dwellers were appearing in the electoral roll as on 01/01/1995 and 40 slum dwellers out of the said 53 have given common consent on 25/01/2011 i.e. about 74% had given consent to the submission of the proposal by the Respondent No.7 on behalf of the Respondent No.6. The High Power Committee observed that the procedure followed by the SRA was not in violation of the guidelines framed under Regulation 33(10) of the

Development Control Regulations for Greater Mumbai, 1991, and the Circular No.14 dated 03/04/1998. The High Power Committee observed that in so far as Circular No.14 dated 03/04/1998 is concerned, it stipulates that if individual agreements are submitted at the time of submission of proposal, there is no need of insisting upon the consent or sanction of the slum dwellers appearing in Annexure-II. The High Power Committee, therefore, held that if there were to be a common consent of 70% of the slum dwellers, then there is no need for submission of individual agreements at the time of submission of the proposal. The High Power Committee therefore held that the contention on behalf of the Applicants that the said guidelines have been breached, could not be accepted. The High Power Committee thereafter referred to the procedure which was followed by the SRA and referred to various steps through which the proposal of the Respondent Nos.6 and 7 passed through. The High Power Committee noted that though the proposal was submitted by the Respondent Nos.6 and 7 on 01/03/2011 along with scrutiny fees and Unique Computerization Number was allotted to the said proposal on 01/03/2011, the Applicants i.e. the Petitioners herein had submitted the proposal on 21/03/2011 i.e. long after the proposal was submitted by the Respondent Nos.6 and 7 and after the said proposal of the Respondent Nos.6 and 7 was processed by the SRA. The High Power Committee concluded that the proposal submitted by the Respondent Nos.6 and 7 was complete in all respects and was accepted by the SRA prior to the partner of the Petitioner

No.1 coming to the SRA on 21/03/2011 for submission of its proposal on behalf of the Petitioner No.2. The High Power Committee therefore observed that the SRA was justified in processing the proposal of the Respondent Nos. 7 and accordingly dismissed the Application. As indicated above, it is the said order dated 18/02/2016 passed by the High Power Committee which is taken exception to by way of the above Writ Petition.

8 To the above Writ Petition, reply affidavits have been filed by the Respondent No.3 – SRA, the Respondent No.6 i.e. the society, and the Respondent No.7 i.e. the developer, in which affidavits the case of the Petitioners has been dealt with.

9 **SUBMISSION OF THE LEARNED SENIOR COUNSEL SHRI. A. Y. SAKHARE ON BEHALF OF THE PETITIONERS :-**

A] That the Respondent No.3 – SRA erred in accepting the incomplete proposal of the Respondent No.7 on behalf of the Respondent No.6 on 01/03/2011.

B] That the acceptance of the incomplete proposal of the Respondent Nos.6 and 7 was in violation of the guidelines which have been framed for implementing Slum Rehabilitation Schemes under Regulation 33(10) of the Development Control Regulations for

Greater Mumbai, 1991.

- C] That the Respondent No.3 – SRA erred in not accepting the proposal of the Petitioners when the said proposal was complete in all respects on the day when it was submitted i.e. on 21/03/2011.
- D] That the Respondent No.3 – SRA erred in allowing the Respondent No. 6 to progressively improve upon or cure the deficiencies in its proposal which is not permissible in terms of the judgment of a Division Bench of this Court reported in 2011(3) ALL MR 1 in the matter of *Atesham Ahmed Khan & ors. v/s. M/s. Lakadawala Developers Pvt. Ltd. and ors.*
- E] That the relevant date for determining whether an Applicant's proposal is received prior in point of time is the date when the proposal complete in all respects is received.
- F] That the High Power Committee has not taken into consideration the letter of the Deputy Collector, Encroachment/Removal dated 04/06/2012 stating that in spite of opportunities granted, the Respondent No.7 did not remove the deficiencies.

- G] That in terms of the Circular No.14 dated 03/04/1998, the Respondent No.6 was enjoined to submit the written agreements in respect of 70% of the slum dwellers at the time of submission of its proposal, that admittedly having not been done so in the instant case, the proposal of the Respondent No.7 was defective and could not be accepted and processed.

10 **SUBMISSION OF THE LEARNED SENIOR COUNSEL SHRI. P. K. DHAKEPHALKAR, ON BEHALF OF THE RESPONDENT NO.3 - SRA :-**

- i] That the Respondent No.3 SRA follows the procedure of a pre-scrutiny after a receipt of the proposal in respect of the Slum Rehabilitation Scheme, as it is not possible to scrutinize the proposal there and then or immediately after its receipt in view of the fact that such a proposal is usually based on a Draft Annexure-II.
- ii] That the Respondent No.3 after receipt of the proposal of the Respondent No.7 assigned it to one of its Executive Engineers to carry out the pre-scrutiny and thereafter assigned it to the Deputy Engineer to carry out a site visit. It is after carrying out the said process that a Unique Computerization Number was given to the proposal of the Respondent No.7 and was directed to pay the

scrutiny fees.

- iii] That since the proposal of the Respondent No.7 was received prior in point of time, that the Petitioners were informed that till the fate of the proposal of the Respondent No.7 is decided, their proposal cannot be considered.
- iv] That the reliance placed on the Circular No.14 on behalf of the Petitioners is misplaced as 70% consent is to be ascertained either from a common consent given by 70% of the slum dwellers or the developer submits agreements entered into with 70% of the slum dwellers in which case common consent is not necessary.
- v] That the reliance placed on the letter dated 04/06/2012 of the Deputy Collector, Encroachment and Removal is misplaced, as the same is the internal correspondence between the Deputy Collector and the Additional Collector. Moreover, the Deputy Collector is not the authority which grants the Letter of Intent (LOI) which power is vested only with the Respondent No.3 – SRA.
- vi] That in the instant case the proposal was received on the basis of a Draft Annexure-II containing the names of 92 slum dwellers, out

of which, names of 53 names were appearing in the electoral roll as on 01/01/1995 out of which, 40 had given consent to the Respondent No.7 and therefore about 74% had given their consent when the proposal was submitted.

vii] That there is no violation of the guidelines in accepting the proposal of the Respondent No.7 as the Respondent No.7 had the consent of more than 70% when the proposal was submitted. Permitting the developer to submit further consents or submit agreements after the common consent is given cannot be said to amount to improving upon the proposal.

11 On behalf of the Respondent No.6 the learned Senior Counsel Shri V B Naik would in addition submit that the Petitioner No.2 has accepted the transit rent and has also shifted to the transit accommodation and implicit in the said fact is the acceptance of the fact that the Petitioner No.2 has accepted the project being implemented by the Respondent Nos.6 and 7.

12 On behalf of the Respondent No. 7 the learned Senior Counsel Shri P K Samdani would submit that the Respondent No.7 has been issued the IOD and CC by the SRA, the structures on site have all been demolished and presently levelling work is going on .

CONSIDERATION :

13 Having heard the learned counsel for the parties, we have considered the rival contentions. The question that is posed is, whether the proposal filed by the Respondent No.7 on behalf of the Respondent No.6 could have been considered by the Respondent No.3 SRA; and whether the Respondent No.3 SRA was right in communicating to the Petitioners that their proposal would only be considered after the fate of the proposal of the Respondent No.7 is decided.

14 As indicated above, the Slum Rehabilitation Scheme under Regulation 33(10) of the Development Control Regulations for Greater Mumbai, 1991 is being implemented on the land bearing CTS No.621 and 622 (Part). In so far as the Slum Rehabilitation Schemes under Regulation 33(10) of the Development Control Regulations for Greater Mumbai, 1991 are concerned, the guidelines have been framed for Submission, Processing and Approval of the Slum Rehabilitation Schemes for which the approval is granted by the Slum Rehabilitation Authority. The said guidelines are in Part-IV of the Development Control Regulations for Greater Mumbai, 1991. The SRA has published a check list of the documents which are required to be submitted along with a proposal for redevelopment of the land beneath the slum under the the Slum Rehabilitation Scheme. In the context of the present controversy

Clause 7 of Part IV of the guidelines is material and is reproduced herein under

:-

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

- a) Consent-cum-agreement between the promoter and the slum-dwellers.
- b) Development rights / Agreement to lease between the promoter and the land owning authority.
- c) Lease agreement between the land owning authority and the co-operative society of slum-dwellers.
- d) Lease agreement between the land owning authority and the co-operative society of free-sale tenement buyers.

15 There are also circulars issued by the SRA in so far as the submission and processing of the proposals are concerned, amongst the said circulars is the Circular No.14 dated 03/04/1998. In the instant case, as indicated above, the Respondent No.7 is the developer who has been appointed by the Respondent No.6 – Navbharat SRA Co-operative Housing Society (Proposed), which is a society of the slum-dwellers. The Respondent No.7 submitted its proposal on 27/01/2011 to the Respondent No.3 – SRA. The Respondent No.3 after following its internal procedure of pre-scrutiny had

issued Unique Computerization Number to the said proposal on 01/03/2011. As indicated above, the said proposal was submitted on the basis of the Draft Annexure-II consisting of about 97 slum-dwellers. Out of the said 97 slum-dwellers, the names of 53 slum-dwellers were appearing in the electoral roll as on 01/01/1995. Out of the said 53 slum-dwellers have given their common consent in favour of the Respondent No.7 which common consent constituted 74% of the eligible slum-dwellers.

16 In so far as the Petitioners are concerned, the Petitioners had submitted their proposal on 21/03/2011 i.e. a good 20 days after the proposal of the Respondent No.7 was pre-scrutinized and the Unique Computerization Number was given to the said proposal of the Respondent No.7. It is in the said circumstances that the Petitioners were informed that their proposal cannot be considered till the fate of the proposal of the Respondent No.7 is decided. The Respondent No.7 thereafter has made various compliances and ultimately Letter of Intent (LOI) dated 23/01/2014 came to be issued to the Respondent No.7. The Petitioners aggrieved by the reply given to their proposal had complained to the Chief Executive Officer, SRA regarding the acceptance of the alleged incomplete proposal of the Respondent No.7, whereas not accepting the proposal of the Petitioners. The Chief Executive Officer, SRA had forwarded the said complaint of the Petitioners to the Deputy Registrar of Co-operative Societies, SRA. The Deputy Registrar of Co-operative

Societies, SRA by letter dated 26/06/2011 communicated to the Petitioners of the rejection of the complaint of the Petitioners. Aggrieved by the said rejection of their complaint by the Deputy Registrar of Co-operative Societies, SRA, the Petitioners filed an Application before the High Power Committee which has been constituted to look into the grievances relating to the implementation of the Slum Rehabilitation or Redevelopment Schemes. Before the High Power Committee the Respondent No.3 – SRA has filed its report as also the Respondent Nos.6 and 7 had filed their replies to the Application filed by the Petitioners. The Petitioners as indicated above had before the High Power Committee sought acceptance of their proposal and setting aside of the letter dated 26/06/2011 whereby the Deputy Registrar of Co-operative Societies, SRA had communicated to the Petitioners the rejection of their complaint. The sum and substance of the case of the Petitioners in the Application before the High Power Committee was that the proposal of the Respondent No.7 was incomplete and that the Slum Rehabilitation Authority had erred in permitting the Respondent No.7 to cure the deficiencies and complete the proposal. As indicated above, it was the case of the Petitioners before the High Power Committee that the consents which were purportedly submitted by the Respondent No.7 along with its proposal were sham, bogus and were also having bogus signatures of the slum-dwellers. The said Application was considered by the High Power Committee and as indicated above by the impugned order dated 18/02/2016 the High Power Committee

has rejected the said Application. The High Power Committee as can be seen from the impugned order has considered the case of the Petitioners that the Respondent No.7 did not satisfy the requirements of 70% consent. The High Power Committee has observed that when the proposal was submitted, 40 slum-dwellers had given their consents out of 53 slum-dwellers whose names were appearing in the electoral roll. The High Power Committee has observed in its order that as per the certified Annexure-II dated 29/05/2013 issued by the Deputy Collector (Encroachment/Removal), out of 53 slum-dwellers who are eligible out of the Draft Annexure-II, 9 slum-dwellers have been held non-eligible as they have refused for survey, 3 structures were found closed at the time of survey, 7 slum-dwellers have been held non-eligible on merits and one slum dweller Shri Akhtar Hussain whose name appears in draft Annexure-II at Sr.No.8 is outside the slum boundary of S. R. Scheme. The High Power Committee observed that even if 9 slum dwellers who have refused the survey, plus the 3 slum dwellers whose structures were closed at the time of survey and whose names have been reflected against independent structures in electoral role of 01/01/1995 were to be included as eligible slum dwellers in addition to 38 slum dwellers already held eligible in certified Annexure-II issued by Deputy Collector (E/R) & Competent Authority dated 29/05/2013 the Respondent No.7 has consent of 37 out of 50 eligible slum dwellers i.e. (38+9+3) which works out to 74%. Hence the High Power Committee has gone minutely into the said aspect of consent and has recorded a finding of fact

that the Respondent No.7 had the consent of over 70% of the slum-dwellers. Hence both at the time of submission of the proposal on 27/01/2011 on the basis of Draft Annexure-II and thereafter on basis of the certified Annexure-II dated 29/05/2013 and the supplementary Annexure-II dated 19/05/2016 the Respondent No.7 enjoyed the confidence of more than 70% of the slum-dwellers.

17 In so far as the requirements of entering into the individual agreements is concerned, it is required to be noted that Circular No.14 dated 03/04/1998 is to the following effect :-

“If individual agreement is submitted at the time of submission of proposal, there is no need to insist upon the consent or signature of the slum dwellers in the format of Annexure-II.

Hence the effect of the said Circular would be if individual agreements are submitted at the time of submission of a proposal, there is no need to insist upon the consent or signature of the slum-dwellers. Conversely it would have to be held that if there is a common consent of 70% of the slum-dwellers, which the developer had obtained, then the mere fact that the individual agreements have not been entered into at the time of submission of the proposal would not make the proposal defective or deficient.

18 The learned Senior Counsel appearing for the SRA Shri P. K.

Dhakephalkar has demonstrated as to how practically the machinery in the SRA works viz. that after submission of the proposal by an Architect of the developer, the same is referred to the Executive Engineer who makes an entry on the receipt of the proposal and finds out whether proposal from any other society in respect of the same land is received. The concerned Executive Engineer thereafter forwards the said proposal to the Sub-Engineer concerned to ensure the completeness of the proposal in so far as the submission of the documents is concerned. Thereafter the concerned Sub-Engineer makes a site visit and pre-scrutinizes the proposal and submits a report to the Executive Engineer. In the instant case, such a report was submitted on 15/02/2011, that the proposal of the Respondent Nos. 6 and 7 is complete in all respects, upon which the Executive Engineer accepted the report and thereby the proposal of the Respondent Nos.6 and 7. It is thereafter that the Unique Computerization Number is assigned to the proposal of the Respondent Nos.6 and 7 which in the instant case was on 01/03/2011.

19 In the instant case as indicated above the Unique Computerization Number has been assigned to the proposal of the Respondent No.7 on 01/03/2011. The proposal submitted by the Petitioner was on 21/03/2011 i.e. a good 20 days after the Unique Computerization Number was assigned to the proposal of the Respondent No.7. Hence the proposal of the Respondent No.7 was pre-scrutinized and by the time the proposal was submitted by the

Petitioners, the Unique Computerization Number was already assigned to the proposal of the Respondent No.7. Hence it is not open for the Petitioners to contend that the proposal of the Respondent No.7 was defective and since the proposal submitted by the Petitioners on 21/03/2011 was allegedly complete in all respect as it is the Petitioners proposal which was required to be accepted and processed.

20 Now coming to the judgment cited on behalf of the Petitioners. In *Atesham Ahmed Khans's* case (*supra*), a Division Bench of this Court referred to the procedure which is followed by the SRA of initially accepting the proposal for implementation of the Slum Rehabilitation Scheme and carrying out a process of verification, the applicant at that stage is required to pay pre-scrutiny fees. The Division Bench after referring to the procedure observed that before the question of scrutiny arises the application must on its face indicate that it fulfills the requirement of 70% consent being obtained by the developer and that an application which on its face does not fulfill the requirement of Regulation 33(10) should be rejected. The Division Bench observed that the Applicant cannot be allowed to progressively make up a deficiency in an application which ex-facie does not fulfill the condition on the date when it is submitted.

In the said case the Division Bench also referred to the judgment

of another Division Bench of this Court reported in 2006 (4) ALL MR 67 in the matter of Awdesh Vasistha Tiwari & ors. v/s The Chief Executive Officer, Slum Rehabilitation Authority & ors. It would therefore be relevant to refer to *Awdesh V. Tiwari's* case (*supra*). In *Awdesh V. Tiwari's* case (*supra*) a Division Bench of this Court was concerned with the scheme under Regulation 33(10). The Division Bench observed that having regard to the said scheme of 70% of the slum dwellers on a particular land come together and apply after formation of the proposed co-operative society the said application has to be independently considered. The scheme according to the Division Bench does not contemplate simultaneous consideration of an application made by a proposed society with an application subsequently made by another developer relating to the same plot of land. The Division Bench held that the applicant society has to have support of 70% if it fails to get 70% support, then the second application can be considered. The obvious intention accordingly to the Division Bench is to avoid unhealthy competition between different builders who are interested in supporting such societies. The Division Bench referred to the consequences that such a simultaneous consideration would have, as unscrupulous elements would try to win over the hutment dwellers, who have supported the application made earlier by another society.

21 It is in the context of the aforesaid judgments that the facts of the instant case would have to be considered. In the instant case as indicated

above when the proposal was submitted by the Respondent No.7 on 27/01/2011 the said proposal was based on a Draft Annexure-II consisting of names of 92 slum-dwellers. Out of the said 92 slum-dwellers, the names of 53 slum-dwellers were appearing in the electoral roll as on 01/01/1995. Out of the said 53 slum-dwellers, 40 slum-dwellers had given consent to the Respondent No.7. Hence the Respondent No.7 at the time of submission of the proposal on 27/01/2011 had the support of 70% of the slum-dwellers. Thereafter the Annexure-II was certified by the Deputy Collector (Encroachment/Removal) on 29/05/2013. In the certified Annexure-II it seems out of 38 eligible slum-dwellers, 37 eligible slum-dwellers had given their consent. The Respondent No.7 thereby constituted more than 97% slum-dwellers on the said plot of land. It is after the SRA had carried out the process of pre-scrutiny, that the Unique Computerization Number came to be given to the proposal of the Respondent No.7 on 01/03/2011 and the Respondent No.7 was directed to pay the scrutiny fees. Hence in the instant case the date 01/03/2011 is the defining date on which the proposal of the Respondent No.7 can be said to have been accepted by the SRA for consideration. After the payment of the scrutiny fees, the proposal of the Respondent No.7 was thoroughly scrutinized and having found to be in order, the Letter of Intent (LOI) dated 23/01/2014 came to be issued. The Petitioners herein as indicated above had approached the SRA for the first time on 21/03/2011 i.e. a good 20 days after the Unique Computerization Number was given to the proposal of

the Respondent No.7. Hence in terms of the law laid down by the Division Benches of this Court, the proposal of the Petitioners could not be considered, as a prior proposal of the Respondent No. 7 was under consideration and in respect of which Unique Computerization Number was given to the said proposal of the Respondent No.7, and hence the High Power Committee has rightly rejected the contention urged on behalf of the Petitioners that the proposal of the Respondent No.7 was incomplete and deficient inasmuch as the Respondent No.7 did not have the consent of 70% of the slum-dwellers when it submitted the proposal. Upon hearing the learned counsel for the parties and upon perusal of the record we do not find any error in the said finding of the High Power Committee.

22 In so far as implementation of the Slum Rehabilitation Scheme is concerned, from the affidavit of the Respondent No.7 it is disclosed that the Respondent No.7 has submitted individual agreements entered into with the slum-dwellers and the IOD and CC was received by the Respondent No.7 on 21/02/2015 and 09/11/2015 from the SRA. The Respondent No.7 has demolished the structures on the land in question. The Respondent No.7 has also paid the land premium and claims to have invested a substantial amount of over Rs.6 Crores till date in the implementation of the Slum Rehabilitation Scheme. The said Slum Rehabilitation Scheme is therefore in the process of being implemented.

23 It is pertinent to note that the Petitioner No.2 has already given his irrevocable consent to the Respondent Nos.6 and 7. He has also executed the individual agreement on 05/11/2015 with the Respondent No.7 and thereby has made his consent explicit, the Petitioner No.2 has also accepted the rent/compensation of Rs.1,50,000/- on 05/11/2015 towards temporary transit accommodation and vacated his structure. The Petitioner No.2 has also on 06/09/2016 accepted further amount of Rs.1,45,200/- towards the said transit rent. Hence by his said conduct the Petitioner No.2 has accepted implementation of the Slum Rehabilitation Scheme by the Respondent No.7 for the Respondent No.6 Society of Slum-dwellers. Having accepted the said scheme by his conduct as above, it does not befit the Petitioner No.2 to file the above Writ Petition along with the Petitioner No.1 to challenge the implementation of the Slum Rehabilitation Scheme by the Respondent No.7. The Petitioner No.2 therefore by his conduct has dis-entitled himself to any relief in the above Writ Petition.

24 In so far as the order passed by the High Power Committee is concerned, the High Power Committee has taken into consideration the report of the Respondent No.3 – SRA, the replies filed on behalf of the Respondent No.6 and the Respondent No.7, and thereafter has recorded findings as regards the contentions urged on behalf of the Petitioners in so far as the acceptance of

the proposal of the Respondent No.7 is concerned.

25 In our view, the order passed by the High Power Committee cannot be said to suffer from any illegality for this Court to exercise its writ jurisdiction. The above Writ Petition is accordingly dismissed. Rule discharged with parties to bear their respective costs.

[SMT. SADHANA S JADHAV, J]

[R.M.SAVANT, J]