

A

AMEY CO-OP. HOUSING SOCIETY LTD.

v.

PUBLIC CONCERN FOR GOVERNANCE TRUST AND ORS.

FEBRUARY 1, 2007

B

[DR. AR. LAKSHMANAN AND ALTAMAS KABIR, JJ.]

*Maharashtra Regional and Town Planning Act, 1966*

C

*Municipal area—Residential plots—Allotment of—In violation of Regulations—Regulations provided for the allotment of plots either by public advertisement or at a fixed price for co-operative housing societies or on individual applications—The plots in question were cornered by builders who set up dummy societies to acquire the plots and to raise constructions thereon, which would be used both for residential and commercial purposes,*

D

*thereby making large gains for themselves and defrauding the City and Industrial Development Corporation (CIDCO)—The plots were initially allotted to 6 allottees, each being allotted one plot at a fixed price—The said plots were amalgamated into one plot—It was alleged that none of these societies were genuine housing societies and were dummy creations of a*

E

*Developer—The High Court arrived at the conclusion that the allotments made in favour of the 6 allottees were liable to be quashed and there was no question of regularizing the same—The High Court stopped further constructions and held that the entire construction on the plots in question was to stand forfeited and vested in CIDCO—The alternate prayer made for*

F

*obtaining a fresh valuation and compensating CIDCO to the extent of its losses, if any, was not granted—Correctness of—Held: The directions given for forfeiture of the land and the constructions raised thereupon were unrealistic, particularly when an alternate prayer had been made for a fresh valuation of the plots for the purpose of compensating CIDCO in the event*

G

*the plots were found to have been undervalued—The State Government is directed to cause a fresh valuation of all the plots in question as on the date on which the allotments were made—In the event the value is found to be higher than that paid by the allottees, the difference in value will be paid by the allottees within one month of the demand being made for payment of the same—Once such valuation is effected and payment, if any, is made, the allottees will be entitled to continue with the construction work—High*

H

*Court judgment set aside—CIDCO (Lease of Land to Co-operative Housing Society) Regulations, 1995—New Bombay Disposal of Lands Regulations, 1975.* A

The respondent No. 1 was a registered Trust which filed a Public Interest Litigation in the High Court questioning the manner in which certain residential plots in the Municipal Area had been allotted by the City and Industrial Development Corporation (CIDCO), an authority constituted under the Maharashtra Regional and Town Planning Act, 1966 for development of townships. B

According to the respondent, the allotment and disposal of the plots in question was in violation of the existing regulations regulating such allotment. The New Bombay Disposal of Lands Regulations, 1975 and the CIDCO (Lease of Land to Co-operative Housing Society) Regulations, 1995 provided for the allotment of plots either by public advertisement, or at a fixed price for co-operative housing societies or on individual applications. However, tenders were to be invited as far as plots which were to be granted by public advertisement were concerned. Since genuine co-operative housing societies were usually unable to compete with the builders in open tender, they were to be granted plots of land at a fixed concessional rate and the buildings to be constructed were to be used for residential purposes only. There was even a difference in the Floor Space Index (FSI). In the case of purely residential constructions, the permitted FSI was 1, whereas in the case of constructions to be used for both commercial and residential purposes, the FSI was 1.5. C D E

The plots in question were cornered by builders who set up dummy societies to acquire the plots and to raise constructions thereon, which would be used both for residential and commercial purposes, thereby making large gains for themselves and defrauding CIDCO. The plots were initially allotted to the respondents Nos. 5 to 10, each being allotted one plot at a fixed price. The said plots were amalgamated into one plot. It was alleged that none of these societies were genuine housing societies and were dummy creations of a Developer. All the plots were amalgamated into one plot. F

The High Court arrived at the conclusion that the allotments made in favour of the respondents Nos. 5 to 10 were liable to be quashed and there was no question of regularizing the same. The High Court held that having accepted the prayer of respondent No. 1 for quashing the allotments made in favour of the respondents Nos. 5 to 10, with a further direction to stop the construction activities, there was no question of considering the alternate G H

A prayer 'C' made for obtaining a fresh valuation and compensating CIDCO to the extent of its losses, if any. The High Court further held that the entire construction on the plots in question was to stand forfeited and vested in CIDCO. Hence the appeals.

Disposing of the appeals, the Court

B HELD: 1. Considering the enormity of the expenses which had already been incurred in the development of the six plots and having further regard to the fact that the construction had been raised up to and beyond the 4th floor when the writ petition was moved, even though the High Court was satisfied that undue favour had been shown to the respondent co-operative societies and the Developer, the directions given for forfeiture of the land and the constructions raised thereupon were unrealistic, particularly when an alternate prayer had been made for a fresh valuation of the plots for the purpose of compensating the City and Industrial Development Corporation (CIDCO) in the event the plots were found to have been undervalued.

D [Para 55] [99-B-C]

*Dattaraj Nathuji Thaware v. State of Maharashtra*, [2005] 1 SCC 590, referred to.

E 1.2. The fact that the writ petition had been filed by way of a public interest litigation to remedy a wrong that may have been committed but not to extract the proverbial pound of flesh cannot be lost sight of. There are ample facts to support the case of the writ petitioners that undue advantage had been shown to the concerned co-operative societies and in the bargain to the Developer, but the writ petitioner-Trust approached the Court with its grievance when the construction was already underway with the due sanction of the Municipal Authorities and huge expenses had already been incurred.

F [Para 56] [99-D-E]

G 2. The more pragmatic approach of the High Court would have been to take recourse to the relief prayed for in prayer 'C' of the writ petition and to have the plots revalued by an independent government valuer and to compensate CIDCO in respect of any loss that may have been caused to it on account of undervaluation of the said plots. Apart from the above, the High Court could have also imposed suitable penalties to discourage similar transactions in future instead of taking recourse to such drastic measures such as forfeiture along with cancellation of the allotments. [Para 57]

H [99-E-F]

3. The appeals are allowed and the directions given by the High Court in its impugned judgment are set aside. The State Government is directed to cause a fresh valuation of all the plots in question as on the date on which the allotments were made, with notice to the petitioner and the respondent-co-operative societies through an independent government valuer and in the event the value is found to be higher than that paid by the respondent-co-operative societies, the difference in value will be paid by the appellant within one month of the demand being made for payment of the same. Till such time the difference is not paid, the order of injunction passed by this Court shall continue. [Para 58] [99-G-H; 100-A]

4. Once such valuation is effected and payment, if any, is made, the injunction shall stand revoked and the respondent-co-operative societies will be entitled to continue with the construction work. Needless to say the Municipal Authorities will be entitled to take appropriate action against the respondents concerned in the event the construction is found to have violated any of the Building Rules or the Plan as sanctioned by the Municipality. [Para 59] [100-B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 408 of 2007.

From the Final Judgment and Order dated 23.11.2005 of the High Court of Judicature at Bombay in P.I.L. No. 43/2005.

WITH

C.A. No. 410/2007.

G.E. Vahanvati, S.G., Ravi Kadam, General, F.S. Nariman, R.F. Nariman, Mukul Rohtagi, Chander Uday Singh, Altaf Ahamed, P.H. Parekh, E.R. Kumar, Sameer Parekh, Ranjeeta Rohatgi, Nitin Thukral, Sumit Goel (for P.H. Parekh & Co.), Parimal K. Shroff, Bina Gupta, Inkle Barooah, Amrita Swarup, V.N. Raghupathy, Siddhartha Chowdhury, S.S. Shinde, R.P. Wadhvani, Varun Thakur, Sanjay Dubey, A.S. Bhasme, Vinay Navare and Naresh Kumar for the appearing parties and Petitioner-In-Person in SLP(C) No. 2707/2006.

The Judgment of the Court was delivered by

**ALTAMAS KABIR, J.** 1. Of the four Special Leave Petitions heard together by us, two have already been disposed of and the remaining two, namely, SLP (c) Nos.336/06 and 655/06, are being disposed of by this common

A judgment.

2. Leave granted in both the special leave petitions.

3. Public Concern for Governance is a registered Trust which filed a Public Interest Litigation, being No.43/2005, in the High Court of Judicature at Mumbai, questioning the manner in which certain residential plots in the

B Navi Mumbai Municipal Area had been allotted by the City and Industrial Development Corporation (hereinafter referred to as 'CIDCO'). CIDCO is an authority constituted by the State of Maharashtra under the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as 'the MRTP Act') for development of Navi Mumbai and other townships.

C 4. The allotments made have been challenged on various grounds. The main ground of challenge is that the allotment and disposal of plot Nos. 24 to 29 (Nerul) was in violation of the existing regulations regulating such allotment. According to the writ petitioners, the Regulations provided for the allotment of plots effected either by public advertisement, or at a fixed price for co-operative housing societies or on individual applications. However,

D tenders were to be invited as far as plots which were to be granted by public advertisement were concerned. Since genuine co-operative housing societies are usually unable to compete with builders in open tender, they were to be granted plots of land at a fixed concessional rate and the buildings to be constructed were to be used for residential purposes only. According to the

E writ petitioners there is even a difference in the Floor Space Index, (hereinafter referred to as 'the FSI'). In the case of purely residential constructions, the permitted FSI is 1, whereas in the case of constructions to be used for both commercial and residential purposes, the FSI is 1.5.

F 5. According to the writ petitioners the plots in question were cornered by builders who set up dummy societies to acquire the plots and to raise constructions thereon, which would be used both for residential and commercial purposes, thereby making large gains for themselves and defrauding CIDCO. It is the specific case of the writ petitioners' that having acquired the plots for the use of co-operative housing societies with FSI 1, the builders who are the only entrepreneurs in the construction project, sought to convert these

G plots for commercial use with FSI 1.5, thereby causing wrongful loss to CIDCO to the extent of Rs.36 crores.

6. In support of their case, the writ petitioners relied on two Resolutions adopted by the Board of Directors of CIDCO, being Nos. 8848 adopted on 23rd October, 2003 and 8886 adopted on 25th November, 2003, respectively.

H By the first Resolution, a deviation was made from the normal mode of

allotting plots by fixing the rate for plots to be allotted to the co-operative housing societies (with 1 FSI and purely for residential purposes). The said Resolution reads as follows:- A

*"RESOLUTION NO.8848*

RESOLVED THAT the Board do and hereby approve the Proposal to fix the rate for plots to Co-operative Housing Societies (with 1 FSI and purely for residential purpose) without inviting tender in various developed, developing and new nodes except Kalamboli in Navi Mumbai at fixed rate as mentioned in column No.5 of Table No.1 and Table 2 of the Board Agenda Note (subject to the modification that in respect of society plots situated on smaller roads of 7 to 11 meters the base price shall be enhanced by 30% (instead of 40%) in respect of Nodes specified in Table 2). The rate of Co-operative housing societies in case of Kalamboli node, however, would be same as base price, i.e. Rs.2940/m<sup>2</sup>. B C

RESOLVED FURTHER THAT this policy be implemented only after verifying the genuineness of the Society. D

RESOLVED FURTHER THAT the Vice Chairman & Managing Director/ Chief Economist/Marketing Manager I/Marketing Manager-II/ Marketing Manager III be and are hereby authorized to implement the Resolution. E

RESOLVED FURTHER THAT this decision be implemented without waiting for confirmation of the Minutes.

TO CHEFCO Date 29.10.2003 Approved by the Board vide Resolution NO.8848 Dated 23/10/2003 subject to modifications shown above. Draft Agenda Note/Underlying Papers/Files, Etc. are returned herewith. F

Sd/- 29.10.2003

Chief Secretary." G

7. By virtue of the aforesaid Resolution, CIDCO decided to allot plots of land to co-operative housing societies with 1 FSI, purely for residential purposes without inviting tenders, in various developed and developing and new nodes, except Kalamboli, in Navi Mumbai. Certain other conditions were also indicated, which would all be subject to verification of the genuineness of the society. H

A 8. Resolution No.8886 approved the proposal contained in paragraph two of the Agenda Note subject to certain amendments relating to change in some of the terminologies used in the said Note.

B 9. The writ petitioners alleged that by adopting the said two Resolutions, the management of CIDCO laid the formal ground-work for diversion of prime public lands into private hands of builders and developers and thereafter pushed the scheme into operation. The writ petitioners went on to contend that even the scheme contained in the two Resolutions referred to above had not been published, as was required under Regulation 3 of the 1995 Regulations which provides that:

C “The Corporation may, subject to availability of lands, publish a scheme to invite applications from persons intending to promote and registered the co-operative housing society in accordance with and subject to the Maharashtra Co-operative Societies Act, 1960 and the Rules made thereunder.”

D 10. The next ground of attack in the writ petitions is that Resolution No.8848 provides that the policy indicated therein should be implemented only after verifying the genuineness of the society which entailed the filing of an affidavit showing the continuous residence of the applicant in Maharashtra State for a period of 15 years, which was to be supported by documentary evidence, such as ration cards, passports, domicile certificates etc., together with a declaration that the member concerned had no other dwelling unit in Navi Mumbai. As was pointed out by the High Court while considering the writ applications, the two Resolutions read together showed that CIDCO had decided to allot residential plots with 1 FSI at fixed rates to genuine societies whose members would have to be verified by an affidavit supported by documentary evidence and upon the understanding that their memberships would not be transferred for a specified period. The writ petitioners pointed out that the plots involved in these appeals were initially allotted to the respondent Nos.5 to 10 in Civil Appeal arising out of SLP (c) No. 655 of 2006, each being allotted one plot at a fixed price. According to the writ petitioners none of these societies were genuine housing societies and were dummy creations of Vijay Associates (Wadhwa) Developers. During the hearing of the writ petition, it was shown that the respondent Nos. 5 to 10 had all applied by way of almost identical applications, each of which was by way of a “request for allotment”. All the said applications were addressed to the then Chief Minister of Maharashtra and not to CIDCO,

H

which being a statutory corporation, had a separate legal existence. It was pointed out that all the said applications except for one, contained an endorsement of the Chief Minister "to put up the applications" and had been processed with undue haste on the recommendation of the Managing Director of CIDCO. A

11. What was sought to be conveyed by the above is that all the applications were made pursuant to the two aforesaid Resolutions adopted by the Board and the same were immediately processed and allotments were made in a great hurry though it would be clear from all the applications that they had been filed by one and the same person or organization. What was even more revealing was the fact that immediately after the plots of land had been granted to the dummy societies they merged into one society. It was alleged before the High Court that not one of the 493 members of the dummy societies had spent a single paisa, either for becoming members or towards acquisition of the land and constructions costs. The entire amount of earnest money, lease rent and construction costs till date, totalling about Rs.55 crores, was said to have been spent by the builders alone. From the materials on record, it was pointed out that having sub-divided one plot into six plots and after having allotted one plot to each of the six applicant societies, on or about 13th July, 2004, the said societies made an application for amalgamation of the said plots on 29th August, 2004 and CIDCO consented to amalgamate the plots for development within two days thereafter on 31st August, 2004. B C D E

12. Ultimately, the said six societies were amalgamated to form Amey Co-operative Housing Society Limited on 17th January, 2005. Thereafter, a Memorandum of Understanding for development was executed by each of the six societies with Vijay Associates (Wadhwa) Developers, being the appellant in the Civil Appeal arising out of SLP (C) No.655/2006, on 30th August, 2004, i.e the day after consent was given by CIDCO for amalgamation. F

13. The writ petitioners alleged that although Amey Co-operative Housing Society Limited submitted the Scheme for Amalgamation to the Joint Registrar of Co-operative Societies on 14th September, 2004 and such merger was allowed only on 17th January, 2005, the Municipal Corporation issued a Commencement Certificate dated 17th September, 2004 to the amalgamated society requiring the applicant to give notice to the Corporation on completion of the construction up to the plinth level and prior to the taking up of commencement of further work. G H

A 14. It is alleged that M/s. Vijay Associates commenced construction on behalf of the societies up to the 4th floor level without giving such notice, which impelled the Navi Mumbai Municipal Corporation (NMMC) to issue a stop work notice on 18th December, 2004. Of course, on behalf of the societies it was contended that the stop work notice had been issued because the amalgamation of the six societies had not been effected till then and that the same was only a technical requirement which was satisfied once the amalgamation was completed on 17th January, 2005.

B 15. The writ petitioners also contended that the use of six plots as one amalgamated plot before such amalgamation was allowed, reveals that the construction work on all the six plots was under the complete control of Vijay Associates (Wadhwa) Developers. It was pointed out that Amey Co-operative Society Limited entered into a Final Development Agreement with Vijay Associates (Wadhwa) Developers on 31st December, 2004 even before amalgamation. Under the said Agreement, Amey Co-operative Housing Society Limited authorized Vijay Associates (Wadhwa) Developers to develop the six amalgamated plots and executed an irrevocable power of attorney in favour of the nominees of Vijay Associates (Wadhwa) Developers. It was also pointed out that under the Terms of Agreement, it was declared that certain members of the societies had resigned their membership and that Vijay Associates (Wadhwa) Developers would be entitled to recommend new members in their place for which permission of CIDCO would have to be obtained by the respondent No. 6. The agreement also made provision for transfer of membership and new members desiring to acquire a new flat in the new construction would be provided such flat upon payment of such consideration as may be mutually agreed upon.

F 16. It was the contention of the writ petitioners that every single old member was to be eliminated to make place for new members. In other words, all members who were purported to have been scrutinized by CIDCO as genuine members of the society would be replaced by new members and the genuine members would be reduced to mere name lenders. The writ petitioners contended that the initial members of the six societies were connected with Vijay Associates (Wadhwa) Developers in some way or the other and merely lent their names to enable the said respondent to acquire the plots in question by such dubious means and, in fact, it would be evident right from the inception that it was only the proprietor/chairman of the said respondent who was in control of the entire plan.

H

17. It was contended that most of the proposed members of the six societies appeared to be hutment dwellers in the Navi Mumbai area and from their occupation appeared to be labourers working in the markets that have come up in the area. A

18. As indicated hereinbefore, what was intended to be conveyed by the writ petitioners is that the respondent No.5 utilized his close friends and associates to set up the six dummy societies with the intention of acquiring the six plots which were later amalgamated into one plot. By adopting the aforesaid procedure, Vijay Associates (Wadhwa) Developers with the help of certain officials of CIDCO obtained control of the six plots but not for the purpose for which they were intended. B C

19. Having regard to the restrictions on transfer and the transfers effected by the societies of all their rights in favour of the said respondent, CIDCO gave a notice to the societies on 28th February, 2005 terminating their lease and resuming the land. In reply, it was contended on behalf of the societies that since only an agreement to lease had been executed in favour of Vijay Associates (Wadhwa) Developers, the restrictions regarding transfer and assignment did not apply and accordingly CIDCO was not entitled to enforce its rights under the Agreement of Lease to terminate the lease and to evict the societies and to resume the said plots. It was pointed out that CIDCO had accepted the stand taken on behalf of the societies and did not take any further steps pursuant to its notice dated 28th February, 2005. D E

20. In addition, it was contended that although amalgamated plot No.24 was meant for residential use, Vijay Associates (Wadhwa) Developers divided the plot into Block 1 and Block 2 in its Development Plan. Block 2 is retained for residential use while Block 1 is proposed to be developed for commercial use. The user of the plot both for residential as well as commercial purposes was in violation of the Master Plan for the area as genuine co-operative societies were allotted plots only for residential purposes and not for commercial exploitation as well. F

21. Yet another breach of the rules for the purpose of favouring the said respondent was that although under Rule 3(1) CIDCO was required to publish a scheme to invite applications from persons intending to promote co-operative housing societies, no such scheme was published and the plots in question were allotted to the six different co-operative housing societies merely on their applications made to the Chief Minister. It was urged that in the present case, the entire development is against the letter and spirit of the G H

A CIDCO (Lease of Land to Co-operative Housing Society) Regulations, 1995, which were framed for the disposal of land by CIDCO as the developing authority under Section 118 of the Maharashtra Regional and Town Planning Act, 1966. It was contended that on account of the manipulations effected in order to favour Vijay Associates (Wadhwa) Developers, CIDCO incurred a loss of about Rs.10,000/- per sq.mt. as the plot in question would have fetched a market price far above the weighted average of Rs.10,743/- for the said plot. Reference was made to a report of a committee set up by the State Government, popularly known as the Shankaran Committee, which estimated CIDCO's losses on account of the aforesaid transaction of going into Rs.35 crores.

C 22. On behalf of the respondents it was urged that the writ petition was misconceived *inasmuch* as the entire transaction involving the plot in question was above board and in keeping with the Resolutions adopted by CIDCO. It was argued that all the members of the six different co-operative societies were genuine members and the societies were genuine societies of persons eager to acquire residential accommodation for themselves. It was denied that the said members were mere name-lenders who had been set up by Vijay Associates (Wadhwa) Developers only with a view to acquire the plot in question. It was also reiterated that no transfer had, in fact, been effected in favour of the said respondent who had been retained in common by all the members of the six societies which amalgamated into one society as a matter of convenience for the purpose of development of the said plot on behalf of the members of the co-operative societies. Since the said respondent would be investing both money and labour in the project, it was agreed that a certain portion of the construction would be made available to it for its own use.

F 23. It was further contended that during the course of allotment and commencement of construction, some of the members had chosen to opt out of the scheme which necessitated the empowerment of the said respondent to recommend the induction of new members in place of the outgoing members.

G 24. It was also contended that the construction being raised on the plot in question was in keeping with the sanction which had been granted by the NMMC and the stop work notice which had been issued by the Corporation was only on account of the fact that amalgamation of the six co-operative societies had not been completed till then. Subsequently, the stop work order was revoked and construction had progressed up to the 9th floor involving

H

investment of large sums of money.

A

25. It was also submitted on behalf of the respondents that since the writ petitioners had raised an allegation of under valuation and financial loss to CIDCO, an independent valuation could be made to ascertain the loss, if any, on account of the transaction and to compensate CIDCO to that extent.

B

26. The submissions made on behalf of the respondents did not find favour with the High Court which appeared to be convinced that the respondents had indulged in fraudulent and illegal activities which could not be accepted by the Court. Referring to several judgments of this Court cited both on behalf of the appellants as well as the respondents, the High Court arrived at the conclusion that the allotments made in favour of the six societies were liable to be quashed and there was no question of regularizing the same. The High Court held that having accepted the writ petitioners' prayer for quashing the allotments made in favour of the respondent Nos. 5 to 10, with a further direction to stop the construction activities, there was no question of considering the alternate prayer made for obtaining a fresh valuation and compensating CIDCO to the extent of its losses, if any.

C

D

27. On the basis of its aforesaid conclusion, the High Court quashed the allotments made to the six housing societies, i.e. the respondents Nos. 5 to 10 herein, by letters of intent issued by CIDCO dated 26th March, 2004 and 6th May, 2004. All rights of the persons who had entered into agreements concerning development of the plots nos. 24 to 29, including those of the six housing societies, Amey Co-operative Housing Society Limited which is the amalgamated society and successor to the six housing societies, and Vijay Associates (Wadhwa) Developers would stand extinguished. The said respondent along with its agents and servants were permanently enjoined and restrained from entering upon, remaining in and/or putting up any construction on the said plots. In addition to the above, the entire construction on the said plots Nos. 24 to 29 was to stand forfeited and vested in CIDCO. CIDCO was permitted to enter upon the land and take over the entire construction and appoint its security personnel to guard it. The Navi Mumbai Municipal Corporation was directed to examine as to whether the construction could be regularized and CIDCO was directed to move the Municipal Corporation for that purpose. A further direction was given that if in the opinion of the Municipal Corporation the construction could not be regularized then CIDCO would pull it down and recover its costs for pulling down the structure as well as the removal of debris from Vijay Associates (Wadhwa)

E

F

G

H

A Developers. Thereafter, CIDCO would decide whether the plot with constructions should be allotted to genuine housing societies or whether the plot and construction shall be allotted to a builder to be decided by the process of inviting tender. In the event, CIDCO decided that the plot should go to genuine housing societies, it would have to issue an advertisement accordingly and on receiving offers based on the construction cost with appropriate municipal charges it could take necessary decision for allotment.

28. Several other directions were also given by the High Court while making the rule absolute with costs to be paid by Vijay Associates (Wadhwa) Developers to the petitioners assessed at Rs.1 lakh.

C 29. It is the aforesaid judgment of the Bombay High Court which has been assailed in these appeals.

30. The first of the two appeals has been filed by Amey Co-operative Housing Society which is the amalgamated society of the six co-operative societies and had been made respondent No.6 in the writ petition. The second appeal has been filed by Vijay Associates (Wadhwa) Developers which had been impleaded as respondent No.4 in the writ application.

31. When the Special Leave Petition filed by Amey Co-operative Housing Society Limited (SLP (c) No.336/2206) was taken up for consideration on 12th January, 2006, this Court had directed the continuance of the interim order granted by the High Court till 20th January, 2006. On the returnable date the second Special Leave Petition (C) No.655/2006 filed by Vijay Associates (Wadhwa) Developers, was also taken up for consideration along with the earlier special leave petition filed by Amey Co-operative Housing Society Limited and this Court directed notice to issue on both the Special Leave Petitions. In addition, an interim order was passed whereby it was directed that there would be no construction, no sale and no creation of third party rights. CIDCO was directed to take symbolic possession of the entire property and the interim order passed by the High Court when the Writ Petition was disposed of subsequent to the impugned order, was directed to continue.

G 32. Mr. Fali Nariman, learned senior counsel appearing for the appellants in the appeal filed by Amey Co-operative Housing Society Limited, reiterated the submissions which had been made before the High Court.

H 33. In addition to the above, it was also submitted that the State Government had directed the then Addl. Chief Secretary (Planning), Dr. D.K.

Shankaran, to conduct a discreet inquiry into the affairs of CIDCO during the tenure of Shri V.M. Lal, Vice Chairman and Managing Director, pertaining to allotment of plots in Navi Mumbai. Pursuant to such direction, the Shankaran Committee submitted a detailed report on 1st April, 2005 to the Government wherein it was opined that the prevailing market rate in the prime residential areas of Navi Mumbai at the relevant time, including the plots in question, was not less than Rs.21,000/- per sq. mt. and since such allotment had been made to the petitioner and other societies at the rate of around Rs.10,500/- per sq. mt., CIDCO had suffered a loss of about Rs.35 crores. It was the stand of the Government that it was also the writ petitioner's case in the writ petition that in case of plots where construction had been completed or had reached an advanced and irreversible stage, the CIDCO should recover from the contractors and developers and the co-operative societies the difference between the market value and the price charged to the applicant society. This, in fact, was prayer 'C' in the writ petition. Consequently, according to the State Government it was absolutely essential that an independent valuation be done by an independent valuer to make a valuation report of the market price of the plots in question for the relevant period as this was the only way in which the real loss, if any, caused to and suffered by CIDCO could be ascertained and steps could be taken to recover the same from the concerned parties.

34. Mr. Nariman urged that having made allegations against the then Chairman and Managing Director of CIDCO, the writ petitioners should have made him a party to the proceedings as the said allegations could not have been adjudicated in his absence. It was urged that not having made Mr. V.M. Lal a party respondent, the only public interest that the writ petitioners could serve by way of public interest litigation was to ensure that no financial loss was caused to CIDCO in the transaction involving allotment of the said plots in favour of the respondent Nos. 5 to 10. According to Mr. Nariman instead of welcoming the suggestion for appointment of an independent valuer, the writ petitioners quite surprisingly opposed such a suggestion and the same was duly recorded by the High Court. Mr. Nariman submitted that had the independent valuation been allowed and if it had resulted in a valuation which was much higher than Rs.10,500/- per sq. mt. , it would have supported the writ petitioners' case.

35. It was pointed out that the plot had been advertised with best price of Rs.10,000/- per sq. mt. but no offers had been were received by CIDCO consequent upon the said advertisement. The same plot was subsequently

A offered under the Board Resolution No.8848 at the flat fixed rate of Rs.10063/-. As against the above, the respondents societies paid for the plots at the rate of Rs.10,500/- per sq. mt.

B 36. It was submitted that though in the Writ Petition it had been alleged that the two aforesaid Resolutions had been adopted surreptitiously, the same were neither challenged in the Writ Petition nor cancelled, nor was any finding arrived at by the High Court in that regard.

C 37. Referring to an observation made in the report of the Shankaran Committee that if the plots in question had been sold by way of calling tenders, CIDCO would have fetched a considerably higher price of Rs. 21,000/- per sq. mt. or above, Mr. Nariman submitted that the such observation disregards the two aforesaid Resolutions of the Board, and, in any event, there was no material before the Shankaran Committee in support of the presumed higher valuation of Rs.21,000/- per sq. mt.. On the other hand, the only direct evidence of the market value of the plots before the D Division Bench was the valuation report of Government Approved Valuer, A.P. Maniar and Nanavati, where the value of the land was assessed at Rs.10,150/- per sq.mt. as on March 2004. It was urged that none of the parties had either controverted the correctness of the report nor had the same been adverted to by the Division Bench of the Bombay High Court.

E 38. It was then submitted that except for bald allegations there was also nothing on record to support the allegation that the six co-operative societies, which later merged to form an amalgamated society, were not genuine co-operative societies and had been set up by Vijay Associates (Wadhwa) Developers with persons who were mere name-lenders.

F 39. Mr. Nariman urged that the 1995 Regulations empowered CIDCO to promote and register co-operative housing societies in accordance with the provisions of the Maharashtra Co-operative Societies Act, 1960. Regulation 3 of the said Regulations reads as follows:-

G “The Corporation may, subject to the availability of lands, publish a scheme to invite applications from persons intending to promote and register the co-operative housing society in accordance with and subject to the Maharashtra Co-operative Societies Act, 1960 and the Rules made thereunder.”

H In any event, CIDCO had all along proceeded on the basis that there were

two methods for allotment of lands, (i) under the 1995 Regulations in which the expression "may" appears and (ii) by CIDCO itself passing a resolution under Clause 4 of the New Bombay Disposal of Lands Regulations, 1975, which applied to all lands of the Corporation. Mr. Nariman contended that the said Regulations had a statutory flavour having been made under Section 159 (1) (a) of the Maharashtra Regional and Town Planning Act, 1966. In particular reference was made to Clause 4 which deals with the manner of disposal of lands by CIDCO and reads as follows:-

"4. *Manner of disposal of land.* The Corporation may dispose plots of land by public auction or tender or by considering individual applicants as the Corporation may determine from time to time."

40. According to Mr. Nariman, the Corporation decided to consider the cases of individual applicants in terms of the Board Resolution Nos. 8848 and 8886 referred to above. He also urged that the Regulations of 1975 and 1995 were complementary to each other and their provisions did not militate against each other.

41. Mr. Nariman concluded by urging that the entire transaction was above-board and in keeping with the existing regulations and there was no intention to cause any loss to CIDCO. If, however, the Court is convinced that the transaction had been undervalued, it would be appropriate to obtain a fresh valuation and to pass orders to compensate CIDCO in the event such under-valuation is at all established. According to Mr. Nariman, the directions ultimately given by the High Court for cancellation of the allotments in favour of the respondent Nos. 5 to 10 and forfeiture of the constructions already raised were highly draconian and were liable to be set aside. It was urged that the constructions having reached up to the 9th floor level, the writ petitioners themselves were not convinced that such a direction could be given and accordingly included prayer 'C' which provided for adequate compensation to CIDCO for the alleged loss suffered by it, from which position the writ petitioners were now trying to resile. Mr. Nariman submitted that the judgment of the High Court disclosed a very pedantic and unrealistic approach without considering the ground realities and the fact that the writ petitioners had allowed expenses to be incurred and the constructions to be raised up to a certain point before moving the Court. Mr. Nariman urged that the appellants were ready and willing to have the plots revalued by a Government Valuer and to compensate CIDCO in the event the transactions were found to be under-valued.

A 42. The learned Advocate General of Maharashtra, Mr. Ravi Kadam, submitted that the State Government was not in favour of forfeiture of the lands and the constructions raised thereon on account whereof the respondents had already incurred expenditure to the tune of almost Rs.55 crores. The learned Advocate General urged that while a sum of Rs.38 crores had been spent on acquisition of the plots, a further sum of Rs.17 crores had been spent on the construction raised thereupon. It was contended that the construction was commenced after Commencement Certificate had been obtained from the municipal authorities and hence the same could not be said to be illegal.

B  
C 43. As to the appointment of the Shankaran Committee, the learned Advocate General submitted that pursuant to the report submitted by the Committee, the State Government directed CIDCO to issue show cause notices for cancellation in respect of allotments made to some of the societies. In fact, 14 of the grants were cancelled, while three cases were regularized. There were still a few allotments which were under scrutiny. In any event, D the Shankaran Committee report was treated by the State Government to be a preliminary report and not conclusive and as far as the respondent Nos. 5 to 10 herein were concerned, the allotments were made to them as per the rules and regulations and not in any clandestine manner as had been suggested on behalf of the writ petitioners.

E 44. On behalf of Vijay Associates (Wadhwa) Developers, the appellants in the appeal arising out of SLP (C) No. 655/2006, Mr. Mukul Rohatgi contended that the report of the Shankaran Committee on which reliance had been placed by the Court, had not been made available to the parties and was not even made part of the records. It was submitted that consequently no F reliance should have been placed on the said report.

45. Mr. Rohatgi next contended that the regulations would have no application to the case of the respondent co-operative societies as no scheme, which was one of the methods for allotment of plots, had been published by CIDCO. On the other hand, CIDCO acted in terms of its Board Resolutions G which have not been challenged in the writ petition.

46. Mr. Rohatgi submitted that at all stages CIDCO had followed the rules and regulations and it would be unfair to attribute any bias to its officers involved in the allotment of plots in the Navi Mumbai Township Area. It was pointed out that since the Chief Minister was the ex-officio H Chairman of CIDCO, applications for allotment of plots were often made to

him directly and were thereafter routed to the concerned officials of CIDCO. A  
 There was nothing extra-ordinary in the applications having been made by  
 the respondent-societies to the Chief Minister which were then endorsed to  
 the officials of the Corporation.

47. Mr. Rohatgi also urged that if at all any loss had been caused to  
 CIDCO on account of under-valuation of the plots, the reasonable course of B  
 action would be to have the plots re-valued and in case it was found that  
 they had been under-valued, the respondent - co-operative societies could be  
 directed to compensate CIDCO to that extent. The order passed by the High  
 Court would cause extreme hardship to the respondents and their members  
 and would discourage the object for which CIDCO had been created. C

48. Mr. Rohatgi concluded on the note that in the instant case no  
 public interest was involved and the instant litigation had been resorted to  
 possibly to satisfy a grudge. He urged that as had been observed by this  
 Court in *Dattaraj Nathuji Thaware v. State of Maharashtra*, reported in D  
 [2005] 1 SCC 590, 'public interest litigation' is a weapon which has to be  
 used with great care and circumspection and the Judiciary has to be extremely  
 careful to see that behind the beautiful veil of public interest, an ugly private  
 malice, vested interest and/or publicity seeking is not lurking.

49. The submissions advanced on behalf of the appellants in the two  
 appeals were reiterated by Mr. Altaf Ahmed, learned senior counsel appearing E  
 for CIDCO. Referring to various provisions of the Maharashtra Regional  
 Town Planning Act, 1966, Mr. Ahmed submitted that the Corporation had  
 filed an affidavit before the Bombay High Court through its Marketing  
 Manager wherein it had been stated that CIDCO is the statutory agency of  
 the State Government and since the State Government had shown its F  
 readiness to accept the valuation through an independent valuer, the CIDCO  
 had no objection to the same. In other words, Mr. Ahmed also supported  
 the suggestion made on behalf of the respondent that an independent  
 government valuer be appointed to re-value the plots in question and in case  
 of under-valuation, the concerned co-operative societies be directed to make  
 good the loss to CIDCO. G

50. On behalf of the writ petitioners-respondent No.1 Mr. Chander  
 Uday Singh, learned senior counsel, forcefully and pain stakingly reiterated  
 the submissions that had been made at the time of the hearing of the writ  
 petition before the High Court. He emphasized the manner in which CIDCO H

A had received applications from the six co-operative societies, being the respondent Nos. 5 to 10 herein, and also the manner in which they were processed on a priority basis with the intention of favouring Vijay Associates (Wadhwa) Developers who would not have otherwise been able to procure the said plots for development. Mr. Singh reiterated the case of the writ petitioners that the said respondent had set up dummy co-operative societies with members who had no intention of acquiring any residential accommodation in the buildings to be constructed, with the sole intention of acquiring the six plots for commercial exploitation by replacing all the original members with persons of its choice on mutual understanding.

B  
C 51. Referring to the applications which had been made by the respondent Nos. 5 to 10, Mr. Singh submitted that it would be obvious that all the said applications had been made by one and the same person and had been processed with unusual haste. Even the Corporation seemed to appreciate the urgency involved by granting Commencement Certificate to the appellant, Amey Co-operative Housing Society Limited, even before the six co-operative societies had been amalgamated. Mr. Singh urged that the aforesaid actions on the part of CIDCO as well as the Municipal Authorities are eloquent expressions of favouritism shown to M/s. Vijay Associates (Wadhwa) Developers Limited for reasons best known to the parties.

D  
E 52. Mr. Singh urged that the Bombay High Court had pierced the veil in scrutinizing the allotment of the six plots in favour of the respondent co-operative societies, and had after a correct assessment of the entire matter, directed drastic action to be taken against the perpetrators of the fraud in order to prevent a recurrence of such fraudulent activity in future.

F 53. As far as prayer 'C' of the writ petition is concerned, Mr. Singh submitted that the same was made in the alternative, in the event, the construction had reached an irreversible stage. In the instant case, since the main relief had been granted by the Bombay High Court, the said alternative prayer lost its significance.

G 54. Mr. Singh urged that Mr. V.M. Lal, the then Managing Director of CIDCO, who had appeared and made submissions in person in the appeal filed by him, had admitted that it was not the intention of the Board to deny housing rights in Navi Mumbai to those who did not completely answer the eligibility criteria, notwithstanding the fact that the conditions laid down by the Board had not been followed. Mr. Singh submitted that however drastic H may be the consequences of the High Court's directions, no ground had been

made out for interference with the same and the appeals were liable to be dismissed. A

55. Considering the enormity of the expenses which had already been incurred in the development of the said six plots and having further regard to the fact that the construction had been raised up to and beyond the 4th floor when the writ petition was moved, we are of the view that even though the High Court was satisfied that undue favour had been shown to the respondent co-operative societies and M/s. Vijay Associates (Wadhwa) Developers, the directions given for forfeiture of the land and the constructions raised thereupon were unrealistic, particularly when an alternate prayer had been made for a fresh valuation of the plots for the purpose of compensating CIDCO in the event the plots were found to have been under-valued. B C

56. We cannot lose sight of the fact that the writ petition had been filed by way of a public interest litigation to remedy a wrong that may have been committed, but not to extract the proverbial pound of flesh. There are ample facts to support the case of the writ petitioners that undue advantage had been shown to the concerned co-operative societies and in the bargain to M/s. Vijay Associates (Wadhwa) Developers Limited, but the writ petitioner Trust approached the Court with its grievance when the construction was already under way with the due sanction of the Municipal Authorities and huge expenses had already been incurred. D E

57. In our view, the more pragmatic approach of the High Court would have been to take recourse to the relief prayed for in prayer 'C' of the writ petition and to have the plots re-valued by an independent government valuer and to compensate CIDCO in respect of any loss that may have been caused to it on account of under-valuation of the said plots. Apart from the above, the Bombay High Court could have also imposed suitable penalties to discourage similar transactions in future instead of taking recourse to such drastic measures such as forfeiture along with cancellation of the allotments. F

58. We, therefore, allow the appeals and set aside the directions given by the Bombay High Court in its impugned judgment. The State Government is directed to cause a fresh valuation of all the plots in question as on the date on which the allotments were made, with notice to the petitioner and the respondent-co-operative societies through an independent government valuer and in the event the value is found to be higher than that paid by the respondent-co-operative societies, the difference in value will be paid by Amey Co-operative housing Society Limited, the appellant in Civil Appeal G H

A arising out of SLP (c) No.336/2006 to CIDCO, within one month of the demand being made for payment of the same. Till such time as the difference is not paid, the order of injunction passed by this Court on 20th January, 2006, shall continue.

B 59. Once such valuation is effected and payment, if any, is made, the injunction shall stand revoked and the respondent co-operative societies will be entitled to continue with the construction work. Needless to say the Navi Mumbai Municipal Authorities will be entitled to take appropriate action against the respondents concerned in the event the construction is found to have violated any of the Building Rules or the Plan as sanctioned by the Municipality.

C 60. The appeals are thus disposed of with costs to the respondent No.1 assessed at Rs.25,000/-.

V.S.S.

Appeals disposed of.

D