M/S Popcorn Entertainment & Anr vs City Industrial Development Corpn. & ... on 23 February, 2007

Author: Ar. Lakshmanan

Bench: Ar. Lakshmanan, Altamas Kabir

CASE NO.:
Appeal (civil) 940 of 2007

PETITIONER:
M/s Popcorn Entertainment & Anr

RESPONDENT:
City Industrial Development Corpn. & Anr

DATE OF JUDGMENT: 23/02/2007

BENCH:
Dr. AR. Lakshmanan & Altamas Kabir

JUDGMENT:

J U D G M E N T (Arising Out of SLP (C) NO. 11085 OF 2006) WITH CIVIL APPEAL NO. 941 OF 2007 (Arising Out of SLP (C) NO. 11087 OF 2006) M/s Platinum Entertainment & Anr. .... Appellant(s) Versus City Industrial Development Corpn. & Anr. ...Respondent(s) Dr. AR. Lakshmanan, J.

SLP (C) NO. 11085 OF 2006 Leave granted.

The above appeal was filed against the final judgment and order dated 30.06.2006 passed by the High Court of Judicature at Bombay in W.P.No. 9467 of 2005 whereby the High Court has rejected the writ petition filed by the appellants by holding that the appellants have an equally efficacious remedy of filing a civil suit and thus the writ jurisdiction cannot be invoked.

BACKGROUND FACTS:

> The appellant made an application for allotment of a plot on 18.05.2004 for construction of a multiplex at Kharghar railway station. The first respondent, The City Industrial Development Corporation (in short, "CIDCO") asked the appellants to pay an EMD of Rs. 20 lacs being 10% of the tentative price of the plot in order to consider the application of the appellant. The appellant deposited the said amount of EMD immediately. CIDCO, vide its Board Resolution dated 03.06.2004, approved the allotment in favour of the appellant considering the fact that there were no multiplex in the area and the earlier effort of CIDCO to advertise for such plots had

met with no response. CIDCO issued allotment letter in favour of the appellant asking the appellant to pay Rs.1,80,00,000/-

lacs being the balance price of the plot. The appellant made two separate payments of Rs. 90 lacs each towards the balance price of the plot on 16.08.2004 and 19.08.2004. The appellant paid a sum of Rs.20,00,600/- being the other charges demanded by the respondent. The appellant was asked to pay a further sum of Rs.65,096/- which the appellant paid immediately. CIDCO unilaterally decided to ask the appellants to pay a further sum of Rs.20 lacs by enhancing the rate at which the plot was to be allotted to the appellant from Rs.2500/- per sq. metre as demanded in the allotment letter to Rs.2,750/- per sq. metre because the plot of the appellant was on a 24 metre road. The appellant on 17.11.2004 paid a further payment of Rs.20 lacs along with Rs.2,96,078/- plus Rs.4,957/- being the additional cost and the other charges. On 14.01.2005, the appellant paid a further sum of Rs.19,828/- being the sum demanded by the respondent. The appellant on 17.01.2005 entered into an agreement to lease with the respondent for the allotment of the plot. On 28.02.2005, CIDCO being the Development Authority of the area issued commencement certificate to the appellant permitting the appellant to start construction. On 14.07.2005, the appellant received a show cause notice seeking to cancel the allotment in favour of the appellant on the ground that the allotment was void in view of Section 23 of the Contract Act as being opposed to public policy. The main ground in the show cause notice was that the allotment was without issuance of tender and was opposed to public policy. On 27.07.2005, the appellant submitted a detailed reply to the show cause notice. On 16.12.2005, CIDCO issued an order canceling the agreement to lease and sought to resume the possession of the plot. According to the appellant only the appellant was singled out for cancellation whereas hundreds of allotments made without issuance of tender were allowed to remain which is also a matter of record. In these facts, on 28.12.2005, the appellant approached the High Court by way of writ petition against the said cancellation order dated 16.12.2005. The writ petition was numbered as 9467 of 2005 on 02.01.2006 and the High Court granted stay of the order dated 16.12.2005 and fixed the matter for further hearing on 04.01.2006. The appellant, vide reference dated 08.03.2006 of CIDCO, under the Right to Information Act, 2005 has asked them to supply information regarding the allotments made by Social Service Department without any advertisement i.e. by considering individual applications.

On 16.03.2006, the appellants filed their rejoinder before the High Court pointing out further information sought under the Right to Information Act which clearly proved that the allotment in favour of the appellant was completely in order and was made in terms of the Land Pricing and Land Disposal Policy and also that there was no loss caused to CIDCO in the said allotments. The appellant sought another information from the CIDCO Authorities regarding methodology for allotment of plots for service industries, warehousing, multiplexes, etc. Again on 04.04.2006, the appellant had sought for further information in respect of 15 cases similar to the case of the appellants regarding whether disposal was by tender or without tender, whether the pricing policy was adopted or not etc. Further information was sought on 13.04.2006 regarding allotment of social facility plots during April, 2003 to March, 2005. CIDCO, vide their letter dated 13.04.2006, has informed the appellant that during April, 2003 to March, 2005, 27 plots were allotted for the opening of schools, 9 plots were allotted for opening of colleges, 5 plots were allotted to charitable and religious institutions, 9 plots were allotted to cultural organizations, 2 plots was allotted for

sports and 13 plots were allotted for social welfare. In all 65 plots were allotted under the category of social facility. CIDCO has also confirmed that all the allotments had been made without issuance of tender and that all the abovementioned allotments have been made as per Land Pricing and Land Disposal Policy of CIDCO i.e. the same as was done in the case of the appellant. None of these allotments have been cancelled by CIDCO till date. In this view of the matter, it is clear that the entire basis for seeking to cancel the appellant's plots is illegal and the same cannot stand the test of judicial scrutiny. On 20.04.2006, the appellant filed an additional affidavit before the High Court pointing out certain more information sought by the appellant. On 17.05.2006, the matter was listed before the High Court and was adjourned for 4 weeks to examine the judgment passed by the High Court in the case of Raja Bahadur Mills. The matter was again listed on 30.06.2006 for hearing. The matter was heard and dismissed and the Court indicated that the detailed judgment would be pronounced later. At that stage, counsel for the appellants made a specific prayer to grant interim protection to the appellant for a period of 4 weeks to enable the appellant to approach this Court, the said prayer was orally granted by the High Court. However, on 06.07.2006, the High Court, while issuing a copy of the order on 06.07.2006, dismissed the writ petition of the appellant on the ground of availability of alternative remedy. The High Court rejected the prayer for interim protection to the appellant despite having granted it orally.

Aggrieved by the said order, the appellants filed this appeal by way of special leave petition before this Court. This Court on 24.07.2006 issued notice returnable within 6 weeks and also passed the following interim order:

> "The petitioners had the benefit of stay of dispossession. There will be stay of dispossession pending further orders. But the petitioners will be restrained from putting up any construction until further orders."

SLP (C) NO. 11087 OF 2006 Leave granted.

The above appeal was filed against the final judgment and order dated 30.06.2006 passed by the High Court of Judicature at Bombay in W.P.No. 9468 of 2005 whereby the High Court rejected the writ petition on the ground that the writ jurisdiction cannot be invoked when an equally efficacious remedy of filing a civil suit is available.

BACKGROUND FACTS:

> The appellant made an application on 22.02.2004 requesting for allotment of plot reserved for multiplex. On 8.6.2004, the appellants made a request for allotment of the plot in Airoli for setting up multiplex-cum-auditorium-cum-

entertainment centre. CIDCO, in response to the said application, requested the appellant to submit a detailed project defining all built up activities. The appellant submitted the detailed project report. CIDCO, by their letter of intent, requested the appellant to pay an EMD of Rs. 20,77,000 within 15 days from the receipt of the letter to enable the Board to consider the allotment in favour of the appellant. The appellant accordingly made the EMD on 29.06.2004. On 29.07.2004, CIDCO

approved the allotment of plot No.2, Sector 11, Airoli in favour of the appellant as the Board had not got any response for similar plots in public tender. The total lease premium in respect of the plot was Rs.2,07,70,000/- and the appellants were directed to pay the balance amount of Rs.1,86,93,000/- by 14.09.2004. The allotment was made in terms of the New Bombay Land Disposal Rules, 1975 and also in terms of the Land Pricing and Disposal Policy of CIDCO under which the land could be allotted to any person by considering his individual application at the reserved price fixed by CIDCO. On 16.08.2004 and 13.09.2004, the appellants paid Rs.1,86,93,000/- as demanded. On 15.10.2004, CIDCO after inspection of the plot issued a corrigendum asking the appellants to pay a further sum of Rs.53,236/- being the additional amount due to the marginal increase in the demarcation of the plot. The appellant paid the balance amount of Rs.53,236/- thus making a total payment of Rs.2,08,22,420/- being the full and final payment in respect of allotment in favour of the appellant as demanded by CIDCO. An agreement to lease was entered into with CIDCO in respect of the plot allotted to the appellant. CIDCO, on 01.08.2005, issued a show cause notice to the appellants regarding the plot at Airoli seeking to cancel the agreement to lease executed in favour of the appellants. The appellant made a detailed reply to the show cause notice. The appellant also sought information from CIDCO under the Right to Information Act on 21.12.2005/03.04.2006/04.04.2006/13.04.2006/20.04.2006 regarding allotment to various parties and the details thereon. The appellant, on 28.10.2005, approached the High Court against the cancellation order dated 18.12.2005. The writ petition was listed for hearing on 02.01.2006 and the High Court granted stay of the operation of the order dated 18.12.2005. Parties were asked to file their reply and rejoinder etc. in the writ petition. The matter was listed on 17.05.2006 for hearing and was adjourned by 4 weeks and again listed before the High Court on 30.06.3006 for hearing and the matter was heard and dismissed and the Court indicated that the detailed judgment would be pronounced later. However, on 06.07.2006, the High Court dismissed the writ petition of the appellant on the ground of availability of alternative remedy and rejected the prayer for interim protection to the appellant despite having granted it orally. Aggrieved by the said order, the appellants preferred this appeal by way of special leave petition in this Court. This Court on 24.07.2006 ordered stay of dis-possession pending further orders. In this Court, the appellant in addition to the special leave petition also filed additional affidavit and the counter affidavit filed by respondent No.1 before the High Court of Bombay as annexure-P17. A counter affidavit in reply on behalf of respondent No.1 CIDCO was also filed in the special leave petition specifically stating that in the present case the allotment was cancelled having regard to Section 23 of the Indian Contract Act as the subject allotment was illegal and that as regards the merits of rival contentions, a detailed affidavit was filed before the High Court and for the sake of brevity a copy of the same was annexed as Annexure-R1. The appellant also filed a rejoinder to the counter affidavit filed on behalf of respondent No.1. We heard the arguments of Mr. Vikas Singh, learned senior counsel for the appellant and Mr. Altaf Ahmed, learned senior counsel for the contesting respondent. We have carefully perused the entire pleadings, documents and annexures filed along with the special leave petitions. Mr. Vikas Singh, learned senior counsel took us through the various pleadings and also other relevant records. Mr. Vikas Singh made the following submissions:

1. Maintainability of the writ petition:

As regards non-maintainability of the writ petition, the appellant relied upon the following decisions of this Court wherein this Court has held that the writ petitions can be held to be maintainable under certain circumstances: i. Smt. Gunwant Kaur & Ors. vs. Municipal Committee Bhatinda & Ors [1969 (3) SCC 769]. ii. Century Spinning & Manufacturing Company Ltd & Another vs. The Ulhasnagar Municipal Council & Another (1970 (1) SCC 582).

iii. Dr. Bal Krishna Agarwal vs. State of U.P. & Ors. (1995 (1) SCC 614) iv. Whirlpool Corporation vs. Registrar of Trademarks, Mumbai & Ors. (1998 (8) SCC 1) v. Harbanslal Sahnia & Another vs. Indian Oil Ltd. & Ors. (2003 (2) SCC 107) vi. Corporation of the City of Bangalore vs. Bangalore Stock Exchange (2003 (10) SCC 212) vii. ABL International Ltd. & Another vs. Export Credit Guarantee Corporation of India Ltd & Ors. (2004 (3) SCC 553) viii. Sanjana M. Wig (Ms.) vs. Hindustan Petroleum Corporation Ltd. (2005 (8) SCC 242) He invited our attention to the Whirlpool Corporation case (supra) wherein this Court has held that there are three clear-cut circumstances wherein a writ petition would be maintainable even in a contractual matter. Firstly, if the action of the respondent is illegal and without jurisdiction, Secondly, if the principles of natural justice have been violated and Thirdly, if the appellants' fundamental rights have been violated.

According to the learned senior counsel, all the three principles as laid down in the case of Whirlpool Corporation have been made out in the instant case because the action of CIDCO is wholly without jurisdiction as it is seeking to resile from a concluded contract contrary to the express terms of the contract. Secondly, CIDCO, has violated the principles of natural justice as an order affecting the right of the appellant has been passed without giving an opportunity of hearing to the appellant and thirdly, the appellants' fundamental rights as guaranteed under Article 14 of the Constitution of India have been violated because similar allotments made without calling for tenders are not sought to be cancelled and the appellant is being singled out by CIDCO while seeking to cancel the allotment in favour of the appellant. According to the appellant similar allotments as well as the allotment of the appellant are valid allotments as the same have been made in exercise of the statutory powers of CIDCO under the New Bombay Land Disposal Regulation, 1975 in terms of the Land Pricing and Land Disposal Policy and hence all allotments being valid, there is no justification for CIDCO to cancel the allotment of the appellant while not disturbing the other allotments made in favour of the other parties. Learned senior counsel invited our attention to the details of other allotments made without calling for tender which are available at pages 177 and 187 of the SLP paper book in SLP No. 11085 of 2006. Thus it is submitted that the High Court committed grave error in rejecting the petition filed by the appellant as not maintainable.

Learned senior counsel made certain submissions in regard to the show cause notice where according to him, there is mention of a report submitted by one Dr. D.K. Shankaran, the then Additional Chief Secretary of the Government of Maharashtra. It

> is submitted that the said report was made behind the back of the appellant and without his knowledge and that the said report is an ex-parte report and no benefit can be taken of the same by CIDCO as the report is based upon conjectures and surmises and there is no scientific basis of the findings in the report. He would also further submit that the CIDCO in the final termination order dated 16.12.2005 did not rightly make a mention of Sankaran Report because the same could not have been relied upon as having been made without any legal sanctity.

He invited our attention to the recent pronouncement of this Court in the case of Amey Cooperative Housing Society Ltd. vs. Public Concern for Governance Trust, 2007(2) SCALE 405. In that case, the Advocate General of Maharashtra submitted regarding the status of the Shankaran Committee report that it was treated by the State Government to be a preliminary report only and not conclusive and that in the final cancellation order the only ground made was that the allotment had been made without calling for tenders and without resorting to the process of competitive bidding. Much argument was also advanced in regard to the allegations which have been made out in the counter affidavit before the High Court and in this Court. It is submitted that they were not made party in the show cause notice and were also not a part of the final order of cancellation which is impugned by the appellant in these proceedings. Mr. Vikas Singh further invited our attention to a Constitution Bench judgment of this Court in Mohinder Singh Gill vs. C.E.C, New Delhi reported in 1978 (1) SCC 405 wherein this Court held in para 8 that where an order is passed on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. It is also argued that the said Constitution Bench judgment of this Court has been followed in Union of India & Ors. vs. E.G. Nambudiri , 1991 (3) SCC 38, State Govt. Houseless Harijan Employees' vs. State of Karnataka & Ors. , 2001 (1) SCC 610, Pavanendra Narayan Verma vs. Sanjay Gandhi PGI Medical Sciences & Anr. , 2002 (1) SCC 520 and in Chandra Singh & Ors. vs. State of Rajasthan & Anr. , 2003 (6) SCC 545. Thus, the learned senior submitted that the CIDCO is trying to go beyond the terms of the show cause notice/final order of cancellation when admittedly CIDCO has affirmed other similar allotment and permitted them to continue construction inspite of the allotment being made to the other parties without inviting tenders.

Learned senior counsel further submitted that the allotment made by CIDCO are governed by New Bombay Disposal of Lands Regulations, 1975. Chapter 4 of the said Regulations provide for mode of disposal of the land. Regulation 4 of Chapter 4 provides as under:

> "Manner of disposal of land:- The Corporation may dispose plots of land by public auction or tender or by considering individual applications as the Corporation may determine from time to time."

As per the Land Pricing and Land Disposal Policy of CIDCO, CIDCO has been authorized to dispose of various types of land as per the method of disposal prescribed under column 3 of the said policy. The method of disposal has been prescribed broadly in the following manner:

> 1. By Public Advertisement & at fixed rate

2. By tender

3. on request at fixed rate The Land Pricing and Land Disposal Policy has in all 12 sub-headings like no.1 is residential, no.2 is commercial and no.12 is public utility. In the said policy, making allotment for multiplexes/auditorium/theatre complex to be developed in the private sector is in clause 12 of the Chapter relating to allotment for public utility. CIDCO in their affidavit have made wrong statement on oath that the allotment is commercial because clearly under the Land Pricing and Land Disposal Policy such allotment is not commercial but is allotment for public utility. CIDCO to that extent has committed perjury and are liable as such for the same.

Thus, from a conjoint reading of the Regulation and the Land Pricing and Land Disposal Policy of CIDCO, it is clear that the allotment of land could be done by considering individual application i.e. without inviting tenders. From the Land Pricing and Land Disposal Policy it is also clear that disposal of land under different category are to be considered differently. In the case of allotment of land for auditorium/multiplex, theatre complex to be developed in the private sector, it is prescribed that the land is to be allotted at reserved price and the method of disposal is on request at fixed rate failing which by competitive bidding thus, in the instant case there is no infirmity in the allotment because the same has been made on request at fixed rate at the reserved price. Such allotment is clearly permitted under Regulation and prescribed as the manner of allotment under the Land Pricing and Land Disposal Policy of CIDCO. Even CIDCO in their affidavit filed in the case of Sanjay Damodar Surve vs. State of Maharastra, being PIL No. 140/2004 as well as in the case of K.Raheja, (PIL No.45879/2003, 7637/2004) have stated on oath this very stand that they have the right to make allotment by considering individual applications in terms of the power vested on them under Regulation 4 of the New Bombay Disposal of Lands Regulations, 1975 and it is not understood why CIDCO is seeking to take a different stand in this matter by singling out the appellant.

Mr. Vikas Singh further submitted that the reference to a judgment of this court in Hazi Mastan vs. Kerala Financial Corporation reported in 1988 (1) SCC 166 is misconceived because in the said case there were no statutory regulations providing for the manner of disposal of land and secondly even in that case the Court had approved the disposal of land by considering individual application as being justified in the facts and circumstances of that case. Therefore, learned senior counsel submitted that the reference to the said judgment can be of no help to CIDCO to justify the cancellation order.

Learned senior counsel further contended that this Court in the case of Corporation of the City of Bangalore vs. Bangalore Stock Exchange, reported in 2003 (10) SCC 212 has held that even in the case wherein cancellation of a lease was for a public purpose i.e. for a park and playground by a resolution of the corporation of the city of Bangalore, the same was set aside as there were no such rights reserved to the corporation to cancel the lease under the lease agreement. The appellant in the reply to show cause notice has also referred to judgments in Printers (Mysore) Ltd. vs. M.A. Rasheed & Ors. , 2004 (4) SCC 460 and Chairman & MD.BPL. Ltd. vs. S.P. Gururaja & Ors., 2003 (8) SCC 567 wherein also the allotment had been challenged on the ground that the same had been made without inviting tenders and the High Court had cancelled the allotment and this Court while

reversing the order has held that if the Regulations of the Corporation empower the corporation to make allotment without inviting tenders then such allotment was clearly valid and no challenge to the same would be entertained on the ground that other persons could have been interested in applying for the allotment and that they had not been given opportunity to apply for the same. Clearly in terms of the two judgments referred to above, it could not be said that allotment made without issuance of tenders per se can be said to be bad or being opposed to public policy.

Learned senior counsel for the appellants further submitted that the impugned order violates the fundamental rights as guaranteed under Article 14 of the Constitution because in the similar allotments wherein also Dr. D.K. Shankaran had reported that the same had been done without inviting tenders and CIDCO has suffered huge losses running into crores, CIDCO has taken no steps to cancel those allotments and in fact construction on the said plots are continuing without any objection from CIDCO. Learned counsel for the appellant submitted that the appellant is clearly entitled to the same treatment i.e. of being allowed to take the advantage of allotment in his favour which according to the appellant is in accordance with the Regulations as well as Land Pricing and Land Disposal Policy as done in the case of others and that the hostile discrimination of singling out of the appellant in the matter clearly violates the fundamental rights of the appellant. In fact, learned counsel invited our attention to the similar allotments referred to by Dr. D.K.Shankaran where also huge losses have been reported by Dr. D.K. Shankaran and which allotments are being permitted to continue as under:-

> 1. M/s K. Raheja whose allotment is in the commercial category and where Shankaran had reported Rs. 50 crores loss,
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> 2. M/s Shakti Commercial Premises where the allotment is for the multiplex and the loss reported by Dr. D.K. Shankaran is Rs. 35 crores,
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> 3. M/s Mohan Entertainment where the allotment was also for the multiplex and the loss reported is Rs.23 crores and,
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> 4. M/s Gurudev Industrial Premises Co-operative where the allotment is for service industry/ warehousing and the loss reported is Rs.63.55 crores, are some of such allotments which have been allowed to continue and no steps for cancellation of those allotments are being done by CIDCO as is being done in the instant case of the appellants. Furthermore, CIDCO is taking no action for cancellation of other allotments made by CIDCO without inviting tenders.

It is submitted that the impugned order cannot be sustained also on the ground that there is gross violation of the principles of natural justice in the order. The first violation of natural justice took place when Dr. D.K. Shankaran started his enquiry. Dr. Shankaran conducted the enquiry without notice to the appellant and without hearing the appellant. The appellant while submitting their reply to the show cause notice specifically sought for an opportunity of hearing, the same was also not granted to the appellant before passing of the final order and on this ground also the impugned order is liable to be set aside. The appellant was not even given the copy of Dr. D.K. Shankaran

report for effective reply of show cause notice. The impugned order is also liable to be quashed as the same is wholly without jurisdiction. Once a concluded contract has been entered into between the parties, the parties cannot be permitted to resile from the same contrary to the express terms of the concluded contract. It has been held in the case of Corporation of the City of Bangalore's case (supra) to the effect that CIDCO has no such right to revoke the concluded agreement and hence any action taken by CIDCO contrary to the express terms of the agreement is wholly without jurisdiction. CIDCO cannot take recourse of Section 23 of the Contract Act alleging that the agreement is opposed to public policy because clearly such right is reserved only to the Courts and it is submitted that authorities themselves cannot take recourse to the said section in order to annul a concluded agreement.

As regards the allegations made against Shri V.M. Lal, the then MD, CIDCO questioning the allotment in the counter affidavit, it is submitted that firstly the entire basis of such allegation does not survive because this Court has already expunged all the remarks against Shri V.M. Lal in regard to similar allotment made without issuance of tender during his tenure and the Anti Corruption Bureau of the State of Maharashtra as well as the State of Maharashtra in disciplinary proceedings initiated against Shri V.M. Lal as ge has also been given clean chit with regard to all allotments made by CIDCO during his tenure as CMD of the Board. It is also further contended that it was wrongly suggested by CIDCO that the appellant was not eligible for such allotment because the only criteria of eligibility in such allotment by CIDCO is the submission of the EMD and no other criteria is being taken into consideration before making such allotments. The appellant had also submitted the project report and upon being asked by CIDCO regarding the financial capabilities and expertise of the appellant, the appellant had on 26.05.2004, which was received by CIDCO office on 27.05.2004, submitted a clarificatory letter stating about their experience in the field of construction industry for several years. The appellant had also expressed their willingness to approach technical experts from Multiplex industry to provide the area of Navi Mumbai with excellent entertainment facility. In the said letter they had also stated about their financial standing and had attached a letter from the bank regarding their financial capability and that the Bank also gave a letter dated 27.05.2004 certifying the financial standing of the appellant. At the time of hearing, it was suggested by learned senior counsel for the respondent that the allotment was made without any justification and that there was a huge demand for such plot, it is submitted by learned counsel for the appellant that the appellant has sought information from CIDCO under the Right to Information Act as to whether there was no application pending with them for allotment of the said plot prior in time to the application of the appellant. CIDCO in reply has clearly stated that there was no application prior to the application to the appellant. Even the allotment in favour of the appellant was a reasoned allotment taking into consideration the lack of entertainment facilities in the area and the said issue was also discussed in the board meeting before the allotment and these facts are clear from the information provided to the appellant under the Right to Information Act. Our attention was also drawn to the noting in the file while considering the case of the appellant and before making the allotment that i. "There is no cinema/multiplex facility available today for the residents of CBD Belapur, Kharghar and Kalamboli residents.

ii. From accessibility and land use compatibility point of view, plot no.1, Sector 2, Kharghar admeasuring about 8000 sq. mtrs is an ideal location for multiplex.

iii. This building will be visible from highway and will add to the image of the city.

iv. Adjoining plot no.1 of sector 1 attached to railway station admeasuring 5600 m2 (not demanded yet) is earmarked for city mall."

It is also brought to our notice that in the Board's deliberation it was noted by the then Chairman Shri Javed Khan that promoting a Multiplex near railway station shall be adding value to the development of that node and was needed in view of shortage of entertainment facility in Navi Mumbai.

As regards the suggestion of irregularity in the allotment in favour of the appellant is concerned it is submitted that the Principal Secretary, Urban Development, Government of Maharashtra was present in the Board meeting in which decision was taken to allot the subject plot in favour of the appellant and the subsequent CMD also in his letter dated 09.03.2005 had justified the allotment by saying that there was no comparable data to fault the allotment on the ground that CIDCO has suffered losses in the same. It is also pertinent to point out that Dr. Shankaran was also a member of the Board of Directors of CIDCO in the year 1992-93 and during the said period CIDCO Board approved the allotment in favour of a society without issuing tender in which society Dr. Shankaran also owned a flat. Concluding his elaborate and lengthy submissions, Mr. Vikas Singh submitted that the allotment in favour of the appellant cannot be faulted because the grounds made out in the show cause notice/final order of cancellation are clearly not sustainable in law and the cancellation order needs to be quashed. It is further submitted that the allotment in favour of the appellant is completely legal and correct and the same has been made after duly complying with the Land Disposal and Land Pricing Policy and new Bombay Land Disposal Regulations, 1975. He would therefore submit that the impugned order dated 16.12.2005 and show cause notice dated 14.07.2005 be quashed and the respondents are directed to permit the appellant to go ahead with the construction of multiplex in terms of the lease agreement executed between the appellant and the CIDCO and also in terms of the commencement certificate issued by CIDCO in favour of the appellant.

Same argument was advanced by learned senior counsel in the other civil appeal arising out of SLP (C) No. 11087 of 2006 filed by M/s Platinum Entertainment & Anr.

Mr. Altaf Ahmed, learned senior counsel appearing for the contesting first respondent submitted that the High Court in passing the impugned order rejecting the writ petition filed by the appellant herein has done so principally on the consideration that the appellants had not availed of the available alternative efficacious remedy and as such could not invoke writ jurisdiction of the High Court to decide contractual matters on whatever ground. He would further submit that on this premises the High Court declined to exercise jurisdiction under Article 226 of the Constitution sought to be invoked by the appellant herein. Mr. Altaf Ahmed further submitted that this Court in its decision in Kerala State Electricity Boad & anr. vs. Kurien E. Kelathil & Ors., reported in AIR 2000 SC 2573 has categorically held that merely because a Corporation/Electricity Board can be termed as a limb or instrumentality of the Government and hence State within the meaning of Article 12 of the Constitution of India nonetheless in the matter of contract jurisdiction under article

226 of the Constitution of India cannot be invoked and that this view is also affirmed in decisions in National Highways Authority of India vs. Ganga Enterprises & anr. reported in 2003 (7) SCC 410 and Rajureshwar Associates vs. State of Maharashtra & Ors. , 2004 (6) SCC 362.

Mr. Altaf Ahmed further submitted that in the present case the allotment was cancelled having regard to Section 23 of the Indian Contract Act as the subject allotment was illegal and that as regards the merits of rival contentions a detailed affidavit was filed before the High Court denying the contents of the special leave petition and its accompaniments and list of dates which are inconsistent with and contrary to what is stated hereinabove and as if the same has been expressly traversed and denied. He would, therefore, submit that the appeal is devoid of merits and hence deserves to be dismissed at the threshold in the interest of justice and prayed accordingly. It was further submitted that in case this Court were to remit the matter back to the High Court for fresh disposal, the same writ petition be restored to its original No. along with the pleadings which were already complete with a direction to the High Court to decide the same in a time-bound manner preferably within a short period.

We have given our careful consideration to the rival submissions made by the respective counsel appearing on either side. In our opinion, the High Court has committed a grave mistake by relegating the appellant to the alternative remedy when clearly in terms of the law laid down by this Court, this was a fit case in which the High Court should have exercised its jurisdiction in order to consider and grant relief to the respective parties. In our opinion, in the instant case, 3 of the 4 grounds on which writ petitions can be entertained in contractual matter were made out and hence it was completely wrong by the High Court to dismiss the writ petitions. In the instant case, 3 grounds as referred to in Whirlpool Corpn. (supra) has been made out and accordingly the writ petition was clearly maintainable and the High Court has committed an error in relegating the appellant to the civil court.

It is also pertinent to notice when the allotment was made in favour of the appellant there was no entertainment facility available in the area and CIDCO in its endeavour to do proper planned development of the area was obliged to provide for entertainment for the residents. CIDCO in fact had put an advertisement for tender for various other plots for the said purpose and upon getting no response to the advertisement, CIDCO approved the allotment in favour of the appellant on first come first serve basis. It is not the case of CIDCO or by any other private party that any other application was made prior in time to the application made by the appellants for the same plot and hence the allotment in favour of the appellant cannot be faulted in any manner. It has been held by several decisions of this Court that while developing a new township the objective of the planning authorities is not to earn money but to provide for systematic and all-round development of the area so that the purpose of setting up the township is achieved by more and more people wanting to live in the area in view of the various amenities being provided in the area. Considering this objective in mind, we are of the view that the allotment made in favour of the appellants cannot be faulted with and this Court will accordingly set aside the orders of CIDCO seeking to resile from a concluded contract in favour of the appellants. It is also pertinent to mention that CIDCO in the show cause notice has taken the ground of non-issuance of tender as the only basis for cancelling the allotment and CIDCO in the final order has also confined itself to the non-issuance of tender as the ground for

cancellation but in the reply to the writ petition, CIDCO is seeking to add further grounds to justify the order of cancellation, which is clearly not permissible in terms of the law laid down by this Court in several of its decisions. Learned counsel for the appellant submitted that since all the pleadings, records, annexures filed before the High Court and also of this Court is available before this Court, this Court may dispose of the same on merits without remitting the matter to the High Court for fresh disposal as suggested by learned senior counsel for respondent No.1. It is true that all the records, documents, annexures are available before us. At the same time, the High Court had no occasion to consider all these rival submissions and to render a categorical finding on all the issues. The High Court has disposed of the writ petition only on the ground of availability of alternative remedy. The High Court has not recorded its finding on the merits of the rival claim. Since elaborate arguments were advanced by learned senior counsel for the appellant and countered by learned senior counsel for the respondent, we extracted the entire argument in extenso in order to enable the High Court to consider all the above submissions made by both the parties on merits and dispose of the same within a period of 6 weeks from the date of receipt of this judgment. As already noticed the request for allotment of construction of multiplex was made on 18.05.2004 and the allotment was made by the Board's Resolution dated 03.06.2004. It is also a matter of record that both the appellants in the civil appeals have deposited several crores of rupees as and when directed by respondent No.1. It is also pertinent to notice that commencement certificate to the appellants permitting them to start the construction was also made on 28.02.2005. However, the show cause notice was issued in July, 2005 and the allotment was cancelled subsequently which was challenged in the writ petition in the year 2006.

Since the matter is pending for a very long time before the High Court and also of this Court, we feel just and proper to request the High Court to restore both the writ petitions No. 9467/2005 and 9468/2005 to its original No. along with the pleadings which were already complete and request the High Court to decide the same in a time bound manner preferably and on priority basis within 6 weeks from the date of receipt of this judgment. We make it clear that we have only extracted and reproduced the extensive arguments advanced by learned senior counsel appearing on either side which, in our opinion, would facilitate the High Court to decide the matter afresh on merits. While admitting the special leave petition, this Court on 24.07.2006 granted stay of dispossession pending further orders and also restrained the appellants from putting up any construction until further orders. The said order will be in force till the disposal of the writ petitions by the High Court. The Hon'ble Chief Justice of the High Court is requested to place the matter before a Division Bench for disposal of the same afresh on merits within 6 weeks from the date of the receipt of this judgment. This direction for early disposal is issued in the peculiar facts and circumstances of the case and in public interest. Accordingly, the appeal is disposed of. No costs.