

Bombay High Court

Godrej Properties Ltd vs The State Of Maharashtra Thr. ... on 3 May, 2023

Bench: G. S. Kulkarni, R. N. Laddha

2023:BHC-AS:13409-DB

WP24

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2473 OF 2021

WITH

INTERIM APPLICATION NO.20290 OF 2022

Shelton Infrastructure Pvt Ltd.  
having its registered office at  
31, Sakhar Bhavan, Opp. Oberio Shopping Centre,  
230, Nariman Point, Mumbai - 400 021.

...Petitioner/A

Versus

1. The State Of Maharashtra, through the  
Urban Development Dept.-I  
4th floor Madam Cama road,  
Hutatma Rajyaguru Chowk,  
Mumbai - 400 032.
2. The City Industrial and Development Corpn.  
Of Maharashtra Ltd.,  
Having its registered office  
at "Nirmal", 2nd floor, Nariman Point,  
Mumbai - 400 021.
3. Navi Mumbai Municipal Corporation,  
having its office at  
C.B.D. Belapur, Navi Mumbai - 400 614.

...Respondent

WITH

INTERIM APPLICATION NO. 1067 OF 2022

IN

WRIT PETITION NO. 2473 OF 2021

The City Industrial And Development  
Corporation Of Maharashtra Ltd.  
In the matter between  
Shelton Infrastructure Pvt Ltd.

...Applicant

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondent

WITH

WRIT PETITION NO. 2479 OF 2021

WITH

INTERIM APPLICATION NO. 20295 OF 2022

Neelkanth Infratech Co.  
A partnership firm having its office at  
Shop no. 15, Sunberry, Plot No. 26,

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Sector-08, Ghansoli,  
Navi Mumbai - 400 701

...Petitioner/Applicant

Versus

1. The State Of Maharashtra, through the  
Urban Development Dept.-I  
Government of Maharashtra,  
Mantralaya, Mumbai.
2. The City Industrial and Development Corpn.  
Of Maharashtra Ltd.  
Having its registered office  
at "Nirmal", 2nd floor, Nariman Point,  
Mumbai - 400 021.
3. Navi Mumbai Municipal Corporation,  
having its office at NMMC Headquarters,  
Plot No. 1 & 2, Near Kille Gaothan,  
Palm Beach Junction, Sector - 15A,  
C.B.D. Belapur, Navi Mumbai - 400 614.

...Respondents

WITH

INTERIM APPLICATION NO. 1068 OF 2022

IN

WRIT PETITION NO. 2479 OF 2021

The City Industrial and Development Corporation  
Of Maharashtra Ltd.

...Applicant

In the matter between  
Neelkanth Infratech Co.

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

WITH

WRIT PETITION NO. 2476 OF 2021

WITH

INTERIM APPLICATION NO. 20296 OF 2022

M/s. Juhi Habitat Pvt. Ltd.

through its authorised representative Vijaykumar Bajaj  
having its registered office at 1605/1606,  
The Ambience Court, Plot No. 2, Sector-19D,  
Vashi, Navi Mumbai - 400 703.

...Petitioner/Applicant

Versus

1. The State Of Maharashtra, through the  
Urban Development Dept.-I  
Government of Maharashtra,

Page 2 of 50

3 May, 2023

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- Mantralaya, Mumbai.
2. The City Industrial and Development Corpn.  
Of Maharashtra Ltd.  
Through its Managing Director  
Having office at 2nd floor, CIDCO Bhavan  
CBD Belapur, Navi Mumbai - 400 614.
  3. Navi Mumbai Municipal Corporation  
Through its Municipal Commissioner  
15A, Plot, Sector 1, 2 Palm Beach Road  
C.B.D. Belapur, Navi Mumbai - 400 614. ...Respondents

WITH

INTERIM APPLICATION NO. 1064 OF 2022

IN

WRIT PETITION NO. 2476 OF 2021

CIDCO ... Applicant

in the matter between

M/s. Juhi Habitant Pvt. Ltd. ... Petitioner

Versus

The State of Maharashtra & Ors. ...Respondents

WITH

WRIT PETITION NO. 2477 OF 2021

WITH

INTERIM APPLICATION NO. 20293 OF 2022

Gami And Satyam Ventures Pvt Ltd .

Having its office at

B/3/31, 2-3, Ashtavinayak Apartment,

Opp. Vijaya Bank, Sector-15, Vashi,

Navi Mumbai - 400 703. ...Petitioner/Applicant

Versus

1. The State Of Maharashtra, through the  
Urban Development Dept.-I  
Government of Maharashtra,  
Mantralaya, Mumbai.
2. The City Industrial and Development Corpn.  
Of Maharashtra Ltd.  
Having its registered office  
at "Nirmal", 2nd floor, Nariman Point,  
Mumbai - 400 021.
3. Navi Mumbai Municipal Corporation,  
Having its office at NMMC Headquarters,

Page 3 of 50

3 May, 2023

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Plot No. 1 & 2, Near Kille Gaothan,  
Palm Beach Junction, Sector - 15A,  
C.B.D. Belapur, Navi Mumbai - 400 614.

...Respondents

WITH

INTERIM APPLICATION NO. 1062 OF 2022

IN

WRIT PETITION NO. 2477 OF 2021

The City Industrial and Development Corpn.  
Of Maharashtra Ltd.

...Applicant

In the matter between

Gami And Satyam Ventures Pvt Ltd .

...Petitioner

Versus

The State Of Maharashtra & Ors.

...Respondents

WITH

WRIT PETITION NO. 2478 OF 2021

WITH

INTERIM APPLICATION NO. 20292 OF 2022

Gami And Satyam Ventures Pvt Ltd .  
Having its office at  
B/3/31, 2-3, Ashtavinayak Apartment,  
Opp. Vijaya Bank, Sector-15, Vashi,  
Navi Mumbai - 400 703.

...Petitioner/Applicant

Versus

1. The State Of Maharashtra, through the  
Urban Development Dept.-I  
Government of Maharashtra,  
Mantralaya, Mumbai.
2. The City Industrial and Development Corpn.  
Of Maharashtra Ltd.  
Having its registered office  
at "Nirmal", 2nd floor, Nariman Point,  
Mumbai - 400 021.
3. Navi Mumbai Municipal Corporation,  
having its office at NMMC Headquarters,  
Plot No. 1 & 2, Near Kille Gaothan,  
Palm Beach Junction, Sector - 15A,  
C.B.D. Belapur, Navi Mumbai - 400 614.

...Respondents

WITH

INTERIM APPLICATION NO. 1063 OF 2022

IN

WRIT PETITION NO. 2478 OF 2021

Page 4 of 50

3 May, 2023

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The City Industrial and Development Corporation  
Of Maharashtra Ltd. ...Applicant  
In the matter between  
Gami And Satyam Ventures Pvt Ltd. ...Petitioner  
Versus  
The State of Maharashtra & Ors. ...Respondents

WITH  
WRIT PETITION NO. 2475 OF 2021  
WITH

INTERIM APPLICATION NO. 20294 OF 2022

Godrej Properties Ltd.  
having its registered office at  
Godrej One, 5th floor, Pirojshanagar,  
Eastern Express Highway, Vikhroli (E),  
Mumbai - 400 079. ...Petitioner/Applicant  
Versus

1. The State Of Maharashtra, through the  
Urban Development Dept.-I  
Government of Maharashtra,  
Mantralaya, Mumbai.
2. The City Industrial and Development Corpn.  
Of Maharashtra Ltd.  
Having its registered office  
at "Nirmal", 2nd floor, Nariman Point,  
Mumbai - 400 021.
3. Navi Mumbai Municipal Corporation,  
having its office at NMMC Headquarters,  
Plot No. 1 & 2, Near Kille Gaothan,  
Palm Beach Junction, Sector - 15A,  
C.B.D. Belapur, Navi Mumbai - 400 614. ...Respondents

WITH  
INTERIM APPLICATION NO. 1069 OF 2022  
IN  
WRIT PETITION NO. 2475 OF 2021

The City Industrial and Development Corporation  
Of Maharashtra Ltd. ...Applicant  
In the matter between  
Godrej Properties Ltd. ...Petitioner  
Versus  
The State of Maharashtra & Ors. ...Respondents

WITH

Page 5 of 50  
3 May, 2023

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WRIT PETITION NO. 1214 OF 2021  
WITH  
INTERIM APPLICATION NO. 20297 OF 2022

M/s. Kamdhenu Green,  
through Partner Surinder A. Sabhlok &  
Mr. Chirag Kirit Shah  
Office at 75-76, Mahavir, Sector-17  
Vashi, Navi Mumbai - 400 703 ...Petitioner

Versus

1. The State Of Maharashtra, through the  
Urban Development Dept.-I  
Government of Maharashtra,  
Mantralaya, Mumbai.
2. The City Industrial and Development Corpn.  
Of Maharashtra Ltd.  
Through its Managing Director  
Having office at 2nd floor, CIDCO Bhavan,  
CBD Belapur, Navi Mumbai - 400 614.
3. Navi Mumbai Municipal Corporation,  
through its Municipal Commissioner,  
15A, Plot., Sector 1,2, Palm Beach Road  
C.B.D. Belapur, Navi Mumbai - 400 614. ...Respondents

WITH  
INTERIM APPLICATION NO. 1066 OF 2022

WITH  
WRIT PETITION NO. 1214 OF 2021

CIDCO ...Applicant  
in the matter between  
M/s. Kamdhenu Green ... Petitioner  
Versus  
The State of Maharashtra & Ors. ...Respondents

Mr Virag Tulzapurkar, Senior Advocate a/w. Ms. Bindi Dave, Mr. Ieshan Sinha, Mr. Aayesh Gandhi for Petitioner in WP/2473/2021 and applicant in IA/20290/2022.

Mr Dinyar Madon, Sr. Advocate a/w Mr Rohaan Cama a/w Mr. Sanjay Udeshi, Mr Aditya Udeshi, Mr. Netaji Gawade, Mr. Rahul Sanghvi i/b. M/s Sanjay Udeshi & Co. For Petitioner in WP/2478/2021 and Applicant in IA/20292/2022.

Page 6 of 50  
3 May, 2023

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WP2473\_2021.DOC

Mr Rajiv Chavan, Senior Advocate a/w. Mr. Rohaan Cama, Mr. Sanjay Udeshi, Mr. Aditya Udeshi. Mr. Netaji Gawde, Mr. Rahul Sanghvi i/b. M/s. Sanjay Udeshi & Co. For Petitioner in WP/2477/2021 and applicant in IA/20293/2022.

Mr Arshad Shaikh, Senior Advocate a/w Mr. Rohaan Cama, Mr. Aditya Udeshi a/w Mr Sanjay Udeshi, Mr. Netaji Gawde, Mr. Rahul Sanghavi i/b. M/s Sanjay Udeshi & Co. For Petitioner in WP/2479/2021 and Applicant in IA/20295/2022.

Dr. Milind Sathe, Senior Advocate a/w Mr Yash Momaya a/w Mr Samit Shukla a/w Ms Saloni Shah a/w Ms Sayali Diwadkar i/b DSK Legal for Petitioner in WP/2475/2021 and Applicant in IA/20294/2022.

Mr R.D. Soni a/w Ms. Bhumiika Bajaj i/b Ram & Co. For Petitioner in WP/2476/2021 & WP/6916/2022 and Applicant in IA/20296/2022.

Mr Girish Godbole, Senior Advocate a/w. Ms Shivani Samel, i/b. Mr Aditya P. Shirke for Petitioner in WP/1214/2021 and Applicant in IA/20297/2022.

Dr. Birendra D. Saraf, Advocate General with Mr. P.P. Kakade, Government Pleader with Ms. M.P. Thakur, AGP for Respondent State.

Mr Tejesh Dande for Navi Mumbai Municipal Corporation in WP/2473/2021, WP/2479/2021, WP/6916/2022, WP/2486/2021, WP/2475/2021, WP/1214/2021

Mr. G.S. Hegde, Sr. Advocate a/w. Ms. P.M. Bhansali, for Respondent/ CIDCO and for applicant in IA/1067/2022, IA/1066/2022, IA/1069/2022, IA/1064/2022, IA/1062/2022, IA/1063/2022, IA/1068/2022.

CORAM: -----  
G. S. KULKARNI  
& R.N. LADDHA, JJ.  
RESERVED ON : 23 March, 2023  
PRONOUNCED ON: 3 May, 2023  
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Page 7 of 50  
3 May, 2023

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JUDGMENT (Per G.S. Kulkarni, J.)

1. Rule. Rule made returnable forthwith. Respondents waive service. By consent of the parties, heard finally.

2. This batch of petitions raise common issues of law and facts, hence can be conveniently disposed of by this common judgment.

3. The conspectus of facts, which are not in dispute are required to be stated:

The City and Industrial Development Corporation (for short "CIDCO") is impleaded as a respondent in all these petitions. CIDCO issued public tenders sometime in February, 2021 inviting bids for allotment of residential- cum-commercial plots of land at Navi Mumbai. Such plots offered for allotment, were plots belonging to and/or vested with the CIDCO. The petitioners participated in the different public tenders as invited by CIDCO. The petitioners were successful allottees qua the plots as allotted to them by the CIDCO and subject matter of the present proceedings. In participating in such tenders, each of the petitioners have deposited with CIDCO substantial amounts, as earnest money deposit, later to be adjusted in the total consideration to be paid by them, namely, the lease premium to be paid to the CIDCO. The first instalment of the lease premium was to be paid in four weeks from the date of allotment and the second instalment after six weeks 3 May, 2023 WP2473\_2021.DOC from the payment of first instalment. Thus, within ten weeks, the total amount of lease premium was required to be deposited by the petitioners with the CIDCO.

4. Before the petitioners could deposit the first instalment of lease premium with the CIDCO, under their respective allotments, clouds of uncertainty hovered in relation to these plots of land allotted to the petitioners, on account of actions being resorted by the Navi Mumbai Municipal Corporation (for short "NMMC"), namely, that it was proposed by the NMMC that these plots of land, which were allotted to the petitioners shall be subjected to reservation for different public purposes. It is not necessary to delve into details of such public purpose for which the plots were proposed to be reserved, suffice it to observe, that such issue of reservation being asserted by the Municipal Corporation and the same being resisted by the CIDCO was subject matter of litigation before this Court in Public Interest Litigation No. 22 of 2021 in case of Nishant Karsan Bhagat & Ors.vs. City and Industrial Development Corporation of Maharashtra Ltd. & Ors. and in Public Interest Litigation No. 37 of 2021 in case of Mr. Sunil J. Garg & Ors. vs. State of Maharashtra & Ors.

5. Some background on such PIL proceedings can be noted. The State Government sometime in the year 1970 conceived a plan to set up a twin city across the Mumbai harbour at the relevant time known as "New Bombay" and 3 May, 2023 WP2473\_2021.DOC now "Navi Mumbai". According to the provisions of Section 113 of the Maharashtra Regional and Town Planning (for short "MRTP Act") which falls in Chapter VI of the MRTP Act providing for "New Towns", specified sites came to be designated for setting up the new town of Navi Mumbai. Sub- section (3A) came to be inserted in Section 113 of the MRTP Act by Maharashtra Act 21 of 1971 authorizing the State Government to constitute a New Town Development Authority. Sub-section (3A) as inserted by the said amendment reads thus:



"Having regard to the complexity and magnitude of the work involved in developing any area as a site for the new town, the time required for setting up new machinery for undertaking and completing such work of development, and the comparative speed with which such work can be undertaken and completed in the public interest, if the work is done through the agency of a corporation including a company owned or controlled by the State as a new town, the State Government may notwithstanding anything contained in sub-section (2), require the work of developing and disposing of land in the area of a new town to be done by any such corporation, company or subsidiary company aforesaid, as an agent of the State Government; and thereupon, such corporation or company shall, in relation to such area be declared by the State Government, by notification in the Official Gazette, to be the New Town Development Authority for that area".

6. The State Government, thereafter, issued a notification under sub- section (3A) of Section 113 of the MRTP Act, designating CIDCO as the New Town Development Authority, for the New Bombay area. In exercise of its authority as a New Town Development Authority, CIDCO was authorized and empowered to develop lands as vested in it in the various nodes (areas) of Navi Mumbai and make allotment of plots. In the year 1975, CIDCO also framed 3 May, 2023 WP2473\_2021.DOC the New Bombay Disposal of Land Regulations, 1975 for disposal of the lands, as vested with the CIDCO, for residential and commercial uses etc. and the revenue which was received from the disposal of such land was being utilized by CIDCO for the Planning and Development of the new town. By such process, CIDCO developed lands for various public purposes including to provide various amenities, by designating lands for bus depots, railways, gardens, playgrounds, airport, hospitals, commercial establishments and residential areas. The lands vested with the CIDCO were being gradually developed and after such development, by virtue of the powers vested with the CIDCO as a New Town Development Authority, CIDCO at all material times, had become entitled to make allotment of the plots by following the lawful procedure.

7. Almost after about twenty years of CIDCO being designated as the new town development authority, the State Government by a notification dated 17 December, 1991, issued under section 3 of the Bombay Provincial Municipal Corporation Act, 1949 (now the NMMC Act, 1949) constituted the NMMC for the areas of 44 revenue villages as specified therein w.e.f. 1 January, 1992. The State Government by its orders dated 15 December, 1994 and 29 July, 2008 conferred on the NMMC powers as a "planning authority" in two phases. Thus, the NMMC also became the "planning authority" within the meaning of Section 2(19) of the MRTP Act, in its capacity as the "local authority" as 3 May, 2023 WP2473\_2021.DOC defined under section 2(15) of the MRTP Act, that is a Municipal Corporation as constituted under the NMMC Act, 1949.

8. Also, by a notification dated 15 December, 1994 as issued by the State Government under Section 154 of the MRTP Act, the NMMC was permitted to act as a Planning Authority in respect of the developed nodes of Vashi, Sanpada, Belapur, Kopar-khairne and Airoli as also was empowered to exercise all powers under Chapter III and IV of the MRTP Act. Such notification also provided that considerable portion of land in the said areas were still to be developed and disposed of by CIDCO, hence, in order to enable CIDCO to discharge its functions as the New Town Development

Authority, it would not be necessary for CIDCO to approach the NMMC for development permission in regard to areas of land being vested in and developed by CIDCO. Although the NMMC was constituted and designated as Planning authority, however, the mandate and authority vested with the CIDCO to exercise powers as the New Town Development Authority and accordingly to take all actions in regard to the portions of land to be developed and disposed of by the CIDCO, continued to remain in operation and subsisted with CIDCO, despite the NMMC being constituted.

9. Thus, for the Navi Mumbai area, there were two planning authorities under the MRTP Act, which remained functional, however, under different 3 May, 2023 WP2473\_2021.DOC spheres. The original authority, being the CIDCO, with whom the functions of Planning and Development, and preparation of the development plan for the purpose of Town Planning stood vested in the year 1980, in exercise of such powers, had prepared a "Draft Development Plan" which was submitted to the State Government. By notification dated 18 January, 1980, the State Government, in exercise of powers under section 31(1) of the MRTP Act, sanctioned such Draft Development Plan to be the final development plan which was in the form of a structural plan for the New Town area to be brought into force w.e.f. 1 March, 1980. CIDCO had accordingly continued to function as the Development Authority on this front.

10. On 14 December, 2017, NMMC published a notification under section 23(1) of the MRTP Act declaring its intention to prepare a draft development plan for the area under its jurisdiction. Immediately thereafter, on 22 December, 2017 NMMC addressed a letter to the CIDCO directing CIDCO not to sale any vacant land owned by it in view of the notification under section 23(1) of MRTP Act. This letter was not in the public domain. On such backdrop, on 13 December, 2019, the General Body of NMMC passed a resolution to the effect that several plots in different nodes of Navi Mumbai be reserved for public purposes. It is pertinent that the said General Body resolution was also not in the public domain albeit it was merely a resolution.

3 May, 2023 WP2473\_2021.DOC

11. Notably, the stand of the NMMC acting under the General Body resolution dated 13 December, 2019 to the effect that the CIDCO should not allot/dispose of any vacant land owned by it, in view of a notification published by the NMMC under section 23(1) of MRTP Act declaring its intention to prepare a draft development plan, was not part of any of the disclosure in the tenders issued by the CIDCO. The plots of land in respect of which CIDCO had issued tenders, in fact were sought to be reserved by NMMC for public purposes. The petitioners obviously not aware and/or oblivious of such stand of the NMMC, submitted their respective bids, participating in the tenders in question. It is later on, in view of certain litigation which had come before this Court in Writ Petition No. 9283 of 2019 (Arham Developers vs. CIDCO) and in another case of Fornex Realty, who were similarly placed like the petitioners, and who were refused development permissions and/or whose allotment was cancelled on uncertainty created by such issue, the petitioners discovered that there were serious issues between NMMC and CIDCO in relation to the plots being allotted to them and which were not disclosed to the petitioners or other allottees in the tenders. It was also discovered by the petitioners that the plots which were represented to the petitioners to be unencumbered and freehold, were actually sought to be reserved by the NMMC for public purposes, and hence, if the

petitioners were to take forward the allotment process, there was immimently a chance that the allotment itself would not be fruitful. This for 3 May, 2023 WP2473\_2021.DOC the reason that on one hand the petitioners would make the entire payment to the CIDCO, and in lieu thereof what would be received by them from CIDCO are plots of land which would remain of no utility for any commercial/ residential development for which the public bids were invited by CIDCO in which the petitioners were successful bidders. In these circumstances, the petitioners have approached this Court. The prayers in all these petitions are almost similar. Illustratively, we note the prayers in Writ Petition No. 2473 of 2021 (Shelton Infrastructure Pvt. Ltd. ), which reads thus:

"a) That this Hon'ble Court be pleased to issue Writ of Mandamus or any other writ in the nature of Mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India directing the respondent no. 1 to issue directions and/or instructions, and respondent nos. 2 and 3 to follow such directions and/or instructions, to exclude any reservation on the said plot and specify the purpose and use of the said Plot as Residential and Commercial;

b) That this Hon'ble Court be pleased to issue a Writ of Mandamus or such other writ(s)/order(s) and/or direction(s) in the nature of Mandamus, directing respondent no. 3 to process/consider development permissions in respect of the said plot, as and when applied for, in accordance with law and on the basis that the land use of the said plot is residential and commercial;

c) That without prejudice and in the alternative to prayer clauses (a) and (b) above, this Hon'ble Court be pleased to issue a Writ in the nature of Mandamus or such other writ(s)/order(s) and/or direction(s) in the nature of Mandamus directing respondent no. 2 to refund the Earnest Money Deposit, i.e., Rs.2,53,91,000/- paid by the petitioner in respect of the said plot along with interest thereon @ 18% p.a. or at such rate as this Hon'ble Court deems fit from the date of deposit till refund/payment, without any deduction or adjustment or penalty;

d) That this Hon'ble Court be pleased to issue a Writ of Mandamus or such other writ(s)/order(s) and/or direction(s) in the nature of Mandamus, directing respondent no. 2 to amend/revise the terms of the Allotment Letter to delete Clause G and provide for clause regarding extension of time to pay lease premium to bring it in harmony with the provisions of the Navi Mumbai Disposal of Lands Regulations 2008;

3 May, 2023 WP2473\_2021.DOC

e) That this Hon'ble Court be pleased to issue a Writ of Mandamus or such other writ(s)/order(s) and/or directions(s) in the nature of Mandamus, directing respondents to charge for additional FSI only in accordance with Unified Development Control & Promotion Regulations and nothing in addition thereto;

f) That pending the hearing and final disposal of the instant Writ Petition, this Hon'ble Court be pleased to direct Respondent no. 2 to suspend and/or extend the schedule of payment stipulated at clause G of the Allotment Letter, Exhibit I hereto, without levying on the petitioner, any interest or charges or penalty of any nature, monetary or otherwise, and/or forfeiture and/or termination of the Allotment Letter, Exhibit "I" hereto;

g) That pending the hearing and final disposal of the instant Writ Petition, this Hon'ble Court be pleased to restrain respondent no. 2 from, in any manner, levying or charging or demanding or recovering any further amount under the said Scheme or any interest or charges or penalty monetary or otherwise, from the petitioner;

(h) That pending the hearing and final disposal of the instant Writ Petition, this Hon'ble Court be pleased to direct Respondent no. 2 to deposit in this Hon'ble Court, with all accrued interest thereon, an amount of Rs.2,53,91,000/- being the Earnest Money Deposit paid by the petitioner for the said plot with necessary directions that the said amount be invested and earn interest as the Court deems appropriate.

(I) For ad-interim reliefs in terms of prayers(f), (g) and (h) above."

12. The above Writ Petition was moved before the Court for ad-interim reliefs on 7 May, 2021 when a co-ordinate Bench of this Court, of which one of us (G.S. Kulkarni, J.) was a member, passed an order granting interim protection in terms of the following order:

1. We have heard Mr. Tulzapurkar, learned senior counsel for the petitioners, Mr.Hegde, learned counsel for the CIDCO and Mr.Marne, learned counsel for the Navi Mumbai Municipal Corporation.

2. The petitioners in these three petitions are similarly situated. They are participants in a tender process initiated by the CIDCO for allotment of residential-cum-commercial plots. The CIDCO has held them eligible for such allotment. At the time of submission of their bids, the 3 May, 2023 WP2473\_2021.DOC petitioners have paid substantial amounts as 'Earnest Money Deposit' and now the allotment process has reached to a stage that the first installment of the lease premium is required to be paid by the petitioners after some days. It is at this stage, by certain actions which are taken by Navi Mumbai Municipal Corporation, an uncertainty has arisen qua the proposed allotment in favour of the petitioners, for the reason that these open and free plots offered to the petitioners, are now sought to be placed under reservation by Navi Mumbai Municipal Corporation for public purposes.

3. The contention of the petitioners is to the effect that if the plots are now to be reserved, the entire purpose for which the petitioners have participated in the CIDCO's tender process would stand nullified as the petitioners would not be in a position to use the plots for the purpose of which the allotment procedure was undertaken by the CIDCO. The petitioners intention was never to participate in a process to seek allotment of any plots which in any manner are encumbered.

4. The petitioners have also contended that when the plots were so notified under the tender, there was no proposal to have any reservation for the public purpose qua such plots. In fact the CIDCO had notified that the plots shall be used only for the purposes for which they have been notified that is for residential and commercial use.

5. On the backdrop of the controversy, the immediate urgency which has been pointed out on behalf of the petitioners is that the first installment of the lease premium is immediately payable to the CIDCO and if such an installment is paid and in the event the plots are declared to be under reservation, the entire purpose of the allotment would stand nullified causing a serious prejudice and injury to the petitioners. They have accordingly prayed for interim reliefs to postpone and/or suspend the payment of the installment which is immediately due.

6. Considering the nature of the grievances as urged on behalf of the petitioners, we would require the Navi Mumbai Municipal Corporation and the CIDCO to file reply affidavits and accordingly adjourn these petitions, and while doing so grant an interim protection to the petitioners. We accordingly adjourn the hearing of these petitions to July 13, 2021. The respondents-Corporation and CIDCO shall file their respective reply affidavits by June 21, 2021. Rejoinder, if any, be filed by July 05, 2021.

7. Till July 30, 2021 or until further order, whichever is earlier, there shall be ad-interim reliefs in terms of prayer clause (f) in writ petition Nos.10294 of 2021 and 10295 of 2021 and prayer clause (i) in writ petition No.10316 of 2021 which read thus:-

"Writ Petition Nos.10294 of 2021 and 10295 of 2021 3 May, 2023 WP2473\_2021.DOC f. That pending the hearing and final disposal of the instant Writ Petition, this Hon'ble Court be pleased to direct Respondent No.2 to suspend and/or extend the schedule of payment stipulated at clause G of the Allotment Letter, Exhibit I hereto, without levying on the Petitioner, any interest or charges or penalty of any nature, monetary or otherwise, and/or forfeiture and/or termination of the Allotment Letter, Exhibit "I" hereto."

" Writ Petition No.10316 of 2021 I. That pending the hearing and final disposal of this Writ Petition, this Hon'ble Court be pleased to direct Respondent No.2 to extend and/or suspend the Schedule of Payment at Clause C of the Allotment Letters, without levying any interest or charges or penalty or late payment charges of any nature, whatsoever on Petitioner."

(emphasis supplied)

13. Another batch of petitions with similar cause of action (Writ Petition (St.) Nos. 10617 of 2021, Writ Petition (St.) No. 10614 of 2021, Writ Petition (St.) No. 10371 of 2021 and Writ Petition No. 1214 of 2021) were moved before the Vacation Bench of this Court on 11 May, 2021, when following interim order was passed:

"1. Heard.

2. The Petitioners are participants in a tender process initiated by the CIDCO for allotment of residential-cumcommercial plots. The CIDCO has held them eligible for such allotment and allotted plot nos.8 + 9, Sector 18, Sanpada, Navi Mumbai. At the time of submission of their bids, the Petitioners have paid substantial amounts as 'Earnest Money Deposit' and now the allotment process has reached to a stage that the first installment of the lease premium is required to be paid by the Petitioners after some time.

3. It is at this stage, certain actions which are taken by Navi Mumbai Municipal Corporation, an uncertainty has arisen qua the proposed allotment in favour of the Petitioners, for the reason that these open and free plots offered to the Petitioners, are now sought to be placed under reservation by Navi Mumbai Municipal Corporation for public purposes.

3 May, 2023 WP2473\_2021.DOC

4. The learned Senior Counsel for the Petitioner submits that in view of these subsequent development, they approached this Hon'ble Court to restrain the Respondents from insisting to pay the installment of lease premium. He submits that similar issue was before this court in Writ Petition (St.) No.10294 of 2021 Shelton Infrastructure Pvt. Ltd. vs. State of Maharashtra through Urban Development Department & Ors., Writ Petition (St.) No.10295 of 2021 Shelton Infrastructure Pvt. Ltd. vs. State of Maharashtra through Urban Development Department & Ors. and Writ Petition (St.) No.10316 of 2021 Godrej Properties Ltd. vs. State of Maharashtra through Urban Development Department & Ors. He submits that after hearing all the parties, this court by order dated 07.05.2021, directed Respondent CIDCO not to take any coercive action against the Petitioners in those matters. He submits that those three Writ Petitions are pending for hearing and final disposal on its own merits. He submits that similar orders may be passed in the present proceeding so that issue can be decided simultaneously along with other pending matters.

5. These facts are not disputed by Mr.Hegde, the learned Counsel for the appearing for the CIDCO. He submits that there is no order from Navi Mumbai Municipal Corporation that they are reserving those plots for public purpose. Therefore, there is no question of granting any ad-interim relief at this stage. He further submits that if this court comes to the conclusion that Petitioners are entitled adinterim relief, in that case, issue about payment of interest may be kept open.

6. We have heard both the sides at length. We have also gone through the order dated 07.05.2021 in Writ Petition (St.) No.10294 of 2021. Similar issue is pending before this court for hearing and final disposal on its own merits. In view of these facts, following order is passed:

(a) Respondents to file their affidavit in reply on or before 21/06/2021, with copy to other side.

(b) Rejoinder, if any, to be filed on or before 05/07/2021, with copy to other side.

(c) Ad-interim relief in terms of prayer clauses (i) and (j) is granted, which read thus :-

"(i) That pending the hearing and final disposal of this Writ Petition, this Hon'ble Court be pleased to direct Respondent No.2 to extend and/or suspend the Schedule of Payment at Clause C of the Allotment 3 May, 2023 WP2473\_2021.DOC Letter, without levying any interest or charges or penalty or late payment charges of any nature, whatsoever on the Petitioner;

(j) That pending the hearing and final disposal of this Writ Petition, this Hon'ble Court be pleased to restrain Respondent No.2 from cancelling/ terminating the allotment of the Plot to the Petitioner; and terminating the Allotment Letter; and from taking any coercive or penal steps under the Tender or under the Allotment Letter."

(d) The matter to appear on the board on 13/07/2021 with connected Writ Petition Stamp No. 10294 of 2021."

(emphasis supplied) The above interim reliefs as granted in the present proceedings have continued to operate till date.

14. It needs to be noted that in the meanwhile, PIL petitions Nishant Karsan Bhagat vs. CIDCO and Sunil J. Garg vs. State of Maharashtra (supra) were heard by a co-ordinate Bench of this Court, of which one of us (G.S. Kulkarni, J.) was a member, and were decided by a judgment and order dated 30 August, 2022. In such decision, the Division Bench inter alia held that it was not permissible for NMMC to make reservation of the plots of land vested with CIDCO in its capacity as the New Town Development Authority, being the plots, which were subject matter of allotment to the petitioners. It was held that CIDCO rightfully auctioned these plots of land of which the petitioners were beneficiaries, to be developed at the hands of the petitioners/allottees, who were also the respondents in the said petition. The following questions 3 May, 2023 WP2473\_2021.DOC were framed by the Division Bench as seen in paragraph 55 of the judgment, which were answered in the negative:

"(i) Whether the General Body resolution of the NMMC proposing to reserve CIDCO plots of land for public amenities, in the absence of publication of a Draft Development Plan as per the provisions of Section 26 of the MRTTP Act would create an embargo of a reservation?

(ii) Whether passing of a resolution by the General Body of the NMMC proposing to reserve the plots/lands, can in any manner divest the rights of CIDCO to make allotment of the plots of land?

(iii) Whether the directions issued by the State Government under section 154 of the Act dated 14 June, 2021 and subsequent directions dated 6 September, 2021 are in any manner illegal contrary to the provisions of the MRTP Act?

15. The decision of the Division Bench in Nishant Karsen Bhagat (supra) was assailed before the Supreme Court by one of the petitioners in the said PIL petitions in the proceedings of Special Leave to Appeal (Civil) No. 22639 of 2022 (Chandra Mohan Bhatnagar & Ors. vs. State of Maharashtra & Ors. ), which came to be dismissed by the Supreme Court by an order dated 10 February, 2023.

16. Thus, the Division Bench in Nishant Karsen Bhagat's case having held that there was no embargo of any reservation in respect of plots of lands in question being allotted by CIDCO to the petitioners, and that the said plots could not be subjected to reservation in any proposed development plan necessarily a consequence was brought about that the allotment procedure 3 May, 2023 WP2473\_2021.DOC could be taken forward, as the dark clouds of uncertainty faded into insignificance.

17. It is on the above backdrop the proceedings are before us today. On behalf of the petitioners, the common contention is to the effect that dismissal of SLP before the Supreme Court, affirming the decision of this Court in Nishant Bhagat's case (supra) has paved the way for finalising the allotments of these plots in favour of the petitioners by the CIDCO, for which the CIDCO needs to accept the two installments of lease premium, the payment of which had remained suspended by virtue of the interim orders passed by this Court in the present petitions and as noted above.

18. Mr. Viraj Tulzapurkar, Dr. Milind Sathe, Mr. G.S. Godbole, Mr. Rajeev Chavan and Mr. Madon, learned senior counsel for the petitioners have made the following submissions:

(i) On CIDCO's tender, the petitioners submitted their bids for the plots of land which were unencumbered and having potential of development for the purpose of for which the bids were invited. There was not a slightest indication in the public advertisement and the information brochure, inviting bids that the plots for which the petitioners would be submitting their offers, in any manner were subject to any reservation for public amenities at the hands of NMMC. In such situation, if the petitioners were to proceed to make 3 May, 2023 WP2473\_2021.DOC payment of installments of lease premium in the prevailing situation, it would have been nothing more than the petitioners being put in a position of serious prejudice, jeopardy and litigation.

(ii) It was never the intention of the petitioners nor the intention of the CIDCO that the petitioners who were being allotted plots, should in any manner be entangled in litigation, in respect of the allotted plots and/or receive plots having no development potential, being created by virtue of the actions of the NMMC, asserting that these plots shall be subjected to reservation for public purpose. It can never be an intention of commercial persons like the petitioners, that by participating in such



public tenders issued by CIDCO, would not be having the benefit of what was offered by the CIDCO and/or that any uncertainty would prevail after the full amount of lease premium was paid by the petitioners.

(iii) In regard to the uncertainty created by the reservation as proposed by the NMMC over the allotment of these plots, it is submitted that in paragraph 6 of the affidavit-in-reply of Mr. Hemant Thakur, filed on behalf of NMMC, it was categorically stated that the General Body in its meeting held on 13 December, 2019 has accorded sanction to the Draft Development Plan with major changes and further resolved to publish it for inviting suggestions/objections from the general public as envisaged under section 26(1) of the MRTP Act. It is 3 May, 2023 WP2473\_2021.DOC submitted that the General Body Resolution No. 1516 dated 13 December, 2019 was received by the Town Planning Officer on 28 February, 2020 which had inter alia suggested reservation of various plots which were yet to be allotted by CIDCO. In the affidavit it was categorically stated that in respect of plots involved in the petition, the General Body had suggested reservation and that after incorporating major changes suggested by the General Body Resolution, further process of publication of the draft development plan for inviting suggestions and objections was to be initiated.

(iv) It is submitted that the reply affidavit of NMMC had also made it clear that a communication was addressed by NMMC to the CIDCO on 22 December, 2017 inter alia informing the CIDCO that without permission from the NMMC, no sub-division, amalgamation or allotments of plots to individuals shall be granted by CIDCO. It is submitted that CIDCO also pointed out in its reply affidavit that CIDCO had addressed letters dated 1 February, 2021 and 5 March, 2021 to the State Government as also NMMC to delete the proposed reservations in the draft Development Plan clamped on CIDCO's 300 plots. In such context, NMMC had by its letter dated 12 April, 2021 had submitted its detailed report to the Government to protect the statutory rights of NMMC as Planning and Local Authority and also had sought protection from the State Government to allow NMMC to publish the draft Development Plan. It is submitted that after allotment letters were 3 May, 2023 WP2473\_2021.DOC addressed in April, 2021 to the Assistant Director of Town Planning of the NMMC, informing that the petitioners had participated in the E-tender cum E-auction, as undertaken by CIDCO and that the petitioners were successful bidders and beneficiaries of the allotment letters issued by CIDCO, allotting plots for which the bids were submitted and thereafter the petitioner was to make payment of first installment of lease premium by 13 May, 2021 and second installment by 13 June, 2021. In such context, NMMC was requested by the petitioners that the petitioners were given to understand that NMMC in its Planning Committee had reserved some plots as public utility plots and hence it be informed to confirm whether the plot as allotted to the petitioners were reserved for public utility purposes by the NMMC or otherwise, before the installments are paid. However, no reply was received from NMMC and in these circumstances, the petition came to be filed and this Court had granted protection to the petitioners on 7 May, 2021 and 11 May, 2021. Also such letters are addressed to CIDCO, however, no reply was received. It is thus submitted that all these are the circumstances which would show that there were encumbrances on the plots of land, namely, of the reservation for public utility and it is for such reason, a protection came to be granted by interim orders passed by this Court. It is contended that the Vacation Bench of this Court in such circumstances on 11 May, 2021 granted interim relief in terms of prayer clause (i) and (j), which was a direction to CIDCO to extend and/or 3 May, 2023 WP2473\_2021.DOC

suspend the Schedule of Payment at Clause C of the Allotment letter, without levying any interest or charges or penalty or late payment charges of any nature, whatsoever on the petitioner and also to restrain CIDCO from cancelling/terminating the allotment of plots to the petitioner and terminating the allotment letter and from taking any coercive or penal steps under the tender or under the allotment letter.

(v) The petitioners, hence, have rightly invoked the jurisdiction of this Court, not only in assailing such action of the NMMC, in regard to which the petitioners have already succeeded in their prayers as made in the petition to such extent, when the PIL petitions came to be decided in their favour by the judgment of the Division Bench in "Nishant Karsan Bhagat" case (supra) and further the Supreme Court dismissing the SLP filed against the said decision of the Division Bench.

(vi) It is submitted that the petitioners were throughout protected by substantive orders, which certainly have legal consequences inasmuch as the CIDCO could not have demanded payment of lease premium either the first or the second installment, by virtue of the said interim orders. Thus, by the interim orders passed by this Court on 7 May 2021 and 11 May 2021 the petitioners have remained protected. The legal consequence brought about by the orders passed by this Court cannot be overlooked by CIDCO. The CIDCO 3 May, 2023 WP2473\_2021.DOC is now under an obligation to pave the way to enable the petitioners to make payment of the balance lease premium, without demanding any interest or delayed payment charges, as now the uncertainty over the reservation has come to an end as a result of the SLP being dismissed against the decision of the Division Bench of this Court in Nishant Karsan Bhagat's case (supra).

(vii) It is submitted that the consequences as brought about by the interim orders dated 7 May, 2021 and 11 May, 2021 were accepted by the CIDCO and now when the uncertainty of allotment of plots has been removed in view of the orders passed by the Supreme Court dismissing the SLP, the CIDCO cannot turn around and take a position that CIDCO would now not accept two installments of lease premium payable by the petitioners under the allotment of plots in question. It is submitted that even the Earnest Money Deposit at all material times stood deposited with the CIDCO and it was never attempted to be refunded to the petitioners much less by praying for modification of the interim orders dated 7 May, 2021 and 11 May, 2021.

(viii) It is submitted that the petitioners were in a total state of uncertainty inasmuch as Section 46 of the MRTP Act was staring at the petitioners once the NMMC had decided to assert that the plots of land allotted to the petitioners are under reservation. This for the reason that even if the petitioners were to proceed to pay the balance lease premium and accept 3 May, 2023 WP2473\_2021.DOC allotment, plots which were purportedly reserved by the NMMC, the petitioners could not have proceeded to develop the plots in the light of the proposed reservation.

(ix) It is next submitted that the position of the plots allotted to the petitioners being proposed to be reserved by the NMMC was so firm that the State Government was required to intervene by issuance of a notification under section 154 of MRTP Act dated 14 June, 2021 and 6 September, 2021, which itself was subject matter of challenge in the PIL petitions filed by Nishant Karsan Bhagat and by Sunil J. Garg. It is thus submitted that till the Division Bench of this Court decided that the NMMC

could never exercise its powers as Planning Authority to reserve the plots in question, being allotted to the petitioners, uncertainty on the allotment of the plots in favour of the petitioners very much subsisted, till the same was ultimately confirmed by the Supreme Court in the SLP being dismissed on 10 February, 2023.

(x) It is submitted that most significantly the brochure inviting bids in respect of plots inviting tenders, in regard to the time limit for payment of installment of lease premium recognize the powers of the Managing Director to extend the period determined in the payment of installments of lease premium, being Clause No. 19 and 20. It is submitted that such clauses as contained in the brochure were completely in consonance with the statutory 3 May, 2023 WP2473\_2021.DOC regulations, being the Navi Mumbai Disposal of Land (Amendment Regulations, 2008), as framed by the CIDCO in exercise of powers under sub- clause (i)(a) of Section 159(1) of MRTP Act. It is submitted that however in the allotment letter as issued to the petitioners, a representation as contained in Clauses 19 and 20 of the brochure was absent, as the allotment letter contained a clause contrary to the same, namely, Clause (g) when it provided that all the installments of lease premium shall be required to be paid within the time limit as prescribed in the allotment letter and no extension of time whatsoever will be given to the allottee by the Corporation under any circumstances.

(xi) It is submitted that to overcome the situation of any such uncertainty, Regulation 6 of the New Town Disposal of Land Regulations (supra), clearly provides for a power with the Managing Director to grant relaxation of the time limit to make payment of the lease premium, as may be prescribed in the allotment letter for making payment of lease premium and for relaxation for making of payment on delayed payment charges. This is a fit case where the Managing Director ought to have exercised his powers and ought to have accepted two installments of lease premium from the petitioners.

(xii) Supporting such contentions, learned senior counsel for the petitioner has placed reliance on the decision of Hira Tikkoo vs. Union Territory, 3 May, 2023 WP2473\_2021.DOC Chandigarh & Ors.,<sup>1</sup> and the decision of Division bench of this Court in Nishant Karsen Bhagat vs. CIDCO & Ors. (supra).

19. On the other hand, Mr. Hegde, learned senior counsel for CIDCO has made the following submissions:

(i) At the outset, it is not disputed that the protection granted to the petitioners by virtue of interim orders dated 7 May, 2021 and thereafter on 11 May, 2021 has continued to operate. Mr. Hegde would, however, submit that now as the petitions are at the stage of hearing, the interim orders ought to have any consequence on the principal prayers, as made in the petition.

(ii) It is submitted that it is not in dispute that in February, 2021, brochure/advertisements were published inviting e-Tenders cum E-Auctions. The bidders had submitted online bids by making payment of Earnest Money Deposit and that the bids were finalized by end of February, 2021 and allotment letters were issued. He would submit that allotment letters issued to the petitioners have a

specific condition, namely, that the lease premium is required to be paid by allottees/petitioners in two installments divided into a period of 10 weeks and no extension of time shall be granted in making payment of the installments.

1 (2004) 6 SCC 765 3 May, 2023 WP2473\_2021.DOC

(iii) It is submitted that PIL petitions filed by Nishant Karsen Bhagat (supra) and Sunil J. Garg (supra) were frivolous and there was no impediment for the petitioners to make payment of lease premium without prejudice to their rights and contentions. The petitioners were in fact required to show their bonafides by depositing amounts of lease premium with CIDCO. However, the petitioners took a contrary position and approached this Court and prayed for interim orders.

(iv) It is his submission that by virtue of interim orders as obtained by the petitioners, the petitioners did not make payment of the amounts and they had retained the said amounts and in fact used the amounts, which were to be paid by the petitioners to CIDCO. Mr. Hegde has submitted that in this situation, the petitioners cannot be permitted to take advantage that now they would not pay the interest and/or delayed payment charges, having clearly been put to notice that the petitioners in fact were beneficiaries of such amounts and having utilized by not paying it to CIDCO.

(v) It is submitted that the NMMC by its letter dated 6 April, 2021 issued to the petitioner (petitioner in Writ Petition No. 2473/2022) in response to a right to information application of the said petitioner dated 1 March, 2021, had not furnished correct information in regard to the reservation of the said plots. Mr. Hegde's submission is that in fact in law, the plots were never under 3 May, 2023 WP2473\_2021.DOC reservation and what the CIDCO had tendered were encumbered plots and for such reason, it was incumbent for the petitioner to make payment of lease premium as per the terms and conditions of allotment letter. It is submitted that the petitions are not maintainable, as the petitioners are demanding something which is contrary to the terms and conditions of the allotment letter.

(vi) It is submitted that these petitions were filed only on an apprehension. In fact the directives of the State Government issued under section 154 of the MRTP Act were very clear that CIDCO had the authority to make allotment of the plots in question and accordingly, the allotments were made to the petitioners and, therefore, the petitioners were required to make payment of the installments of lease premium. However, the petitioners were not willing to make such payment, thus, necessarily the petitioners would be required to pay delayed payment charges/interest, as per the allotment letters as also as permissible under the New Bombay Disposal of Land Regulations. The petitioners in fact on their own accord ought to have paid the lease premium amounts.

(vii) It is submitted that, in fact after the Division Bench of this Court dismissed the PIL petitions filed by Nishant Karsen Bhagat (supra) and by Mr. Sunil Garg (supra), it was incumbent on the petitioners to make the payment and they ought not to have waited till the Supreme Court dismissed the Special 3 May, 2023 WP2473\_2021.DOC Leave Petition and thus, there is no question of any relief being granted to the petitioners. It is accordingly, submitted that the interim orders need to be vacated and the petitions be dismissed. In support of such contentions, Mr. Hegde has placed

reliance on the decision of the Supreme Court in Amarjeet Singh & Ors. vs. Devi Ratan & Ors. 2 to submit that it is a settled principle of law that no litigant can derive any benefit from mere pendency of case in a court of law, as the interim order passed by the Court always merges in the final order to be passed in the case.

20. In rejoinder, on behalf of the petitioners, learned senior counsel for the parties would submit that the present petitions were always listed along with the PIL petitions as the petitioners were also respondents in the PIL petitions, and in fact the petitioners have succeeded insofar as part of their prayers as made in the present petitions in regard to the issue of reservation by NMMC on the tendered plots, hence CIDCO cannot take a position that petitions were filed on apprehension. It is submitted that for such reason, prayer clause (a) is not required to be adjudicated. It is next submitted that it is too much for the CIDCO to expect that the allottees like the petitioners get sandwiched between two public bodies, namely, CIDCO and NMMC. The petitioners having partly succeeded in their petitions on the prayers on the NMMC purporting to make 2 2009 SCC Online SC 1817 3 May, 2023 WP2473\_2021.DOC reservation on these plots, hence, the decision of the Supreme Court in Amarjeet Singh (supra) is totally not applicable.

#### Analysis and Conclusion

21. We have heard learned senior counsel for the petitioners. We have perused the record.

22. Indisputedly, the petitioners are the beneficiaries of public tenders issued by CIDCO inviting bids for allotment of plots, which stood vested in the CIDCO. The vesting of such plots in the CIDCO was certainly by virtue of the authority and power as conferred on the CIDCO by the State Government appointing CIDCO as the 'New Town Development Authority.' It is now clear that although NMMC was constituted, CIDCO never lost its authority and power to dispose of the plots in question, in accordance with the statutory regulations, namely, the New Bombay Disposal of Lands Regulations, as noted above. It is by virtue of such statutory authority, CIDCO had invited the bids in question in February, 2021. The petitioners are all successful bidders. They have been issued allotment letters allotting the respective plots in their favour.

3 May, 2023 WP2473\_2021.DOC

23. At this juncture, it needs to be observed that when public tenders came to be issued by the CIDCO, the plots in question as allotted to the petitioners in no manner whatsoever were indicated to be encumbered and/or were under any proposed reservation of the NMMC. Thus, the legitimate expectation of the petitioners was certainly, that the petitioners when were receiving allotment of such plots, after paying extraordinary large sums of money/valuable consideration, the plots would be available to the petitioners to be developed by them, for the purpose as set out in the brochure and in the allotment letters issued to the petitioners. However, there is no doubt whatsoever, as also the record is replete with materials, that such impression of the petitioners as borne out by the allotment letters, that they are receiving unencumbered plots was not correct and/or in fact there was a dent to this impression that the plots allotted to the petitioners were in fact being subjected to reservation by the NMMC. This position was further clear and compounded by the NMMC taking a

stand asserting reservation in respect of plots in question and on the other hand, CIDCO insisting that the plots cannot be subject matter of reservation by the NMMC, and in such situation, the State Government was required to intervene, by issuing directives under section 154 of the MRTP Act, clarifying the position that NMMC cannot reserve the plots which stood vested with CIDCO. Further, such directives including the insistence of the NMMC to implement the decision of the General Body of the NMMC to 3 May, 2023 WP2473\_2021.DOC reserve these plots, as also the directives of the State Government were subject matter of challenge before this Court in the proceedings of the PILs files by Nishant Karsen Bhagat and by Sunil J. Garg (supra), was a situation writ large for the petitioners to pursue the present proceedings.

24. Such PIL petitions were adjudicated by the Division Bench of this Court in the case of Nishant Karsan Bhagat & Ors.vs. City and Industrial Development Corporation of Maharashtra Ltd. & Ors. (supra). By its judgment and order dated 30 August, 2022, the Division Bench held that NMMC had no authority to make any reservation or to reserve the subject plots which were allotted to the petitioners. The directives of the State Government issued under section 154 were upheld by the Division Bench and PILs were dismissed. The SLP against the said PILs was also dismissed by the order dated 10 February, 2023 passed by the Supreme Court. It is thus quite clear that uncertainty on the issue of plots allotted to the petitioners being reserved by the NMMC, stood wiped out by the Supreme Court dismissing the SLP in question as noted above.

25. The CIDCO, therefore, would not be correct in its contention that the allotment of plots in favour of the petitioners was without any dispute or controversy in regard to the reservation proposed to be imposed by the NMMC.

3 May, 2023 WP2473\_2021.DOC

26. It also cannot be overlooked that the petitioners were allotted such plots purely for commercial purposes, that is, to be utilized for residential/commercial development and unless such allotment was to be as clear as the sunlight without any uncertainty on its development potential, the petitioners could not have proceeded to complete the transaction formalities of making further payments. Thus, considering as to what was promised by the CIDCO in the notice inviting bids, the petitioners could not be said to be incorrect in their contentions that they had reason to believe that for making payment of instalments, every uncertainty not only from the CIDCO but also from NMMC and State Government was required to be removed.

27. It also needs to be observed that public body like the CIDCO cannot place the allottees of the plots like the petitioners in a situation of uncertainty or a fait accompli, when the representation of the CIDCO to the bidders was to the effect that these were clear plots available for development which later on was realised to be not the correct position. This more particularly when the petitioners were to make payment accepting a clear representation from the CIDCO as made to them, namely, of the plots not being under reservation. After payment of the total lease premium, which are large amounts, the petitioners could not been confronted with a situation that the plots as allotted to them by the CIDCO could not be developed as they are proposed to be reserved by NMMC for public purposes, and further after making such large 3 May, 2023 WP2473\_2021.DOC

payments, the petitioners are made to litigate either for refund of the amounts or for removal of such uncertainty of any proposed reservation to be removed. It is in these circumstances, the petitioners approached this Court in the present proceedings.

28. It also needs an emphasis that the petitioners were parties in both the PILs as filed by the petitioner-Nishant Karsen Bhagat (PIL No. 22 of 2021) and by the second PIL as filed by Sunil J. Garg (PIL No. 37 of 2022). The petitioners defended these petitions along with CIDCO and State Government. The observations as made by the Division Bench in Nishant Bhagat's case relevant in the present context are required to be noted, which reads thus:

"76. On a cumulative reading of the different notifications as issued by the State Government under Section 154 of the MRTP Act and as discussed above, it is manifest that although the NMMC was constituted as a Municipal Corporation in exercise of the powers under section 3 of the NMMC Act, 1949, there was never an intention on the part of the State Government to divest CIDCO of any of its authority as a New Town Development Authority or a Development Authority within the meaning of Section 113(3A) read with Section 2(8) of the MRTP Act. Thus, CIDCO was within its power to develop the undeveloped lands even in the developed nodes, which stood vested in it and allowed the said lands by exercising its statutory powers as conferred under section 118 of the MRTP Act along with other ancillary powers being exercised under the New Bombay Disposal of Land Regulations, 1975 and Navi Mumbai Disposal of Lands (Amendment) Regulations, 2008 for disposal of lands.

77. In these circumstances, it was not permissible for the NMMC to take any position to prevent CIDCO from exercising its statutory powers and duties as the New Town Development Authority to dispose of such lands by purporting to impose an embargo by foisting 3 May, 2023 WP2473\_2021.DOC reservations on the plots of land being developed by CIDCO and now subjected to an allotment by public auction by virtue of the tender process as undertaken in the month of January, 2021 which already stands completed and the allottees, namely, the private respondents, are in the process of finalizing such allotments.

78. To our mind, it is quite clear that the roles of both CIDCO and the NMMC qua the Navi Mumbai area have been recognized by the State Government and completely within the parameters of the MRTP Act. Time and again by issuance of different notifications, the State Government has clarified the position that no conflict ought to be brought about in the functioning of both these bodies exercising their powers and functions as conferred on them under the MRTP Act. Significantly, the intention of the State Government not only from its directives but also from the stand taken by the State Government in the reply affidavit appears to be quite clear, namely, to recognize the role of both these authorities which is quite compartmentalized. The State Government has categorically recognized that since the time CIDCO was constituted as the New Town Development Authority and till the constitution of the NMMC and for such period even after its constitution, CIDCO has discharged its

functions as the Planning Authority by reserving lands for different public amenities and it is not the case as put up by the petitioners that the Navi Mumbai area was developed by CIDCO without being alive to the different public needs and purposes and in fact has allocated lands for large number of public purpose. Thus, the charge of the petitioners that the allotment in question in favour of the private respondents by CIDCO is only a revenue earning exercise, is totally untenable. Such revenue being earned by disposal of lands by CIDCO is also being utilized for the purpose of development of Navi Mumbai, which itself is a public purpose.

(emphasis supplied)

29. Considering the decision of the Division Bench and as confirmed by the Supreme Court, there is no manner of doubt that the petitioners are correct in their contention that the very plots allotted to the petitioners were not only subject matter of proposed reservation by NMMC and if the PIL petitions were to succeed, the allotment itself could never have materialized. In these circumstances, if the entire payment of lease premium was to be made by the petitioners, the same would have ended in a non-sequiter, as the allotment 3 May, 2023 WP2473\_2021.DOC would have remained only a paper allotment, that too after the petitioners parting with large amounts of lease premium. Such was never the intention of CIDCO in inviting bids and calling upon the petitioners to participate. As noted above, it was never the intention of the petitioners to bid for plots which were under such clouds of uncertainty and/or impredicability. Moreover, it can never be expected from a public body that it can vaguely deal with any public largesse and in a manner not intended by the original terms and conditions of allotment and/or in deviation from the original terms and conditions, on the basis of which the allottees participated in the tenders. Significantly, in the present case, possibility of the petitioners being led to a total inconsequential and/or a non-fruitful allotment of plots, if the PIL petitions were to succeed, would have culminated into a total inconsequential allotment of plots by CIDCO to petitioners. Such action of CIDCO would have been clearly hit by petitioners rights guaranteed by Article 14 of the Constitution, as the petitioners were treated arbitrarily and/or not fairly in the matter of allotment of the plots read with Section 19(1)(g), as the allotments were for commercial purposes. This apart, this would have also led CIDCO to a litigation if it was not to refund the amounts.

30. It can never be an intention of a public body that private parties are dragged into unwarranted litigation when such public body deals with public largesse. Thus, certainly a public body like the CIDCO was required to bear in 3 May, 2023 WP2473\_2021.DOC mind adherence to the requirement of fairness, non-discrimination and fulfillment of the basic and legitimate expectations of the allottees of plots in question, namely, that the plots could be utilized for the purpose for which it is allotted and only on such firm foundation accept consideration from the allottees.

31. In our opinion, it would have been a fair approach for the CIDCO having known the intention of NMMC to reserve the plots by adhering to the principles of fairness and non-discrimination, instead of insisting the petitioners to make payment of lease premium, CIDCO should have let the doubts, dilemma and the questions marks on such allotments withered down. The CIDCO thus ought to have waited for adjudication of PIL petitions and till the issues reached their finality, the allotment of



plots could not have been disturbed by the CIDCO. Such an expectation from the public body like CIDCO could have been a fair and legitimate approach in the facts and circumstances of the present case, when NMMC was initially at logger heads with CIDCO to reserve the plots of land as allotted to the petitioners, till the State Government intervened by issuing directives under section 154 of MRTP Act and finally when such clouds of uncertainty were removed by the decision of the Division Bench in PIL petitions and confirmed by the Supreme Court.

3 May, 2023 WP2473\_2021.DOC

32. We are hence are not inclined to accept any of the contentions of Mr. Hegde when in the present facts, he submits that despite the hanging sword of uncertainty on the allotment of plots as made in favour of the petitioners, the petitioners ought to have paid two instalments of lease premium and having not paid the amounts, they are liable to pay delayed payment charges and/or interest.

33. Mr. Hegde is also not correct in asserting the above proposition for the reason that such an argument completely overlooks and militates against the directives of this Court in the interim orders dated 7 May, 2021 and 11 May, 2021 by virtue of which this Court had suspended and/or directed the CIDCO to extend the schedule of payment stipulated in clause G of the Allotment Letters, without levying on the petitioner, any interest or charges or penalty of any nature, monetary or otherwise, and/or forfeiture and/or termination of the Allotment Letter. The interim orders passed by this Court certainly brought about binding legal consequences, namely, that such interim order passed by this Court suspended the schedule of payment stipulated in the allotment letter, also directing the CIDCO not to claim any interest or impose any penalty. Such interim orders passed by this Court were accepted by CIDCO, as the interim orders were never assailed by the CIDCO, and such interim order continued to operate till date.

3 May, 2023 WP2473\_2021.DOC

34. Also, Mr. Hegde's contention that the petitioners be directed to make payment of interest and/or delayed payment charges is directly in the teeth of the interim orders passed by this Court. By virtue of such orders, CIDCO can neither demand any interest or delayed payment charges nor the CIDCO can terminate the allotments as made in favour of the petitioners. If this is the plain consequence of the interim orders dated 7 May, 2021 and 11 May, 2021 as passed by this Court, we wonder as to how Mr. Hegde can argue a position contrary to such orders, when the interim orders were wholly accepted by the CIDCO. Even for such reason, the contentions as urged on behalf of CIDCO that the petitioners ought to pay to CIDCO any delayed payment charges and/ or interest cannot be accepted.

35. Now coming to the decisions as relied on behalf of the parties, Mr. Tulzapurkar has relied on the decision of the Supreme Court in Hira Tikkoo vs. Union Territory, Chandigarh & Ors. (supra). We find that the reliance on such decision to be well-founded. The Supreme Court in such decision has emphasized on the rule of reasonableness and fairness to be adhered by the statutory authority, in the context of parties, who for no fault on their part were deprived of original plots allotted to them, and in fact it is recognized that they would be entitled to refund of the amount. The relevant

observations in that regard can be noted:

3 May, 2023 WP2473\_2021.DOC "25. Surely, the doctrine of estoppel cannot be applied against public authorities when their mistaken advice or representation is found to be in breach of a statute and therefore, against general public interest. The question, however, is whether the parties or individuals, who had suffered because of the mistake and negligence on the part of the statutory public authorities, would have any remedy of redressal for the loss they have suffered. The "rules of fairness" by which every public authority is bound, require them to compensate loss occasioned to private parties or citizens who were misled in acting on such mistaken or negligent advice of the public authority. There are no allegations and material in these cases to come to a conclusion that the action of the authorities was mala fide. It may be held to be careless or negligent. In some of the English cases, the view taken is that the public authorities cannot be absolved of their liability to provide adequate monetary compensation to the parties who are adversely affected by their erroneous decisions and actions. But in these cases, any directions to the public authorities to pay monetary compensation or damages would also indirectly harm general public interest. The public authorities are entrusted with public fund raised from public money. The funds are in trust with them for utilisation in public interest and strictly for the purposes of the statute under which they are created with specific statutory duties imposed on them. In such a situation when a party or citizen has relied, to his detriment, on an erroneous representation made by public authorities and suffered loss and where the doctrine of "estoppel" will not be invoked to his aid, directing administrative redressal would be a more appropriate remedy than payment of monetary compensation for the loss caused by non-delivery of the possession of the plots and consequent delay caused in setting up industries by the allottees.

(See Administrative Law by H.W.R. Wade and C.F. Forsyth, 8th Edn., at pp. 370-73. Also the book Judicial Review of Administrative Action by de Smith, Woolf and Jowell, 5th Edn., at p. 565, para 13-028.)

30. After considering the rival submissions made on behalf of various parties, we are of the view that the rule of reasonableness and fairness by which every statutory authority is bound, demands that the consentees, who, for no fault on their part, were deprived of the original plots of larger sizes, should not be further made to suffer by demanding from them higher price for the alternative plots of smaller sizes. It would be highly iniquitous to demand from them higher price for smaller sizes of plots and add to their losses caused by undue delay in setting up their industries. The Administration is mainly to be blamed for the situation in which the allottees of plots find themselves today. In preparing scheme and allotting plots, it could not have ignored the notification reserving a part of land for the forst and the restriction to the extent of 900 metres around the air force base. The allottees of the plots have paid full or part-price and that amount throughout remained with the Administration. In such circumstances, the Administration must bear a portion of loss, if any, occasioned to it and compensate to some extent the loss caused to the consentees who never objected to allotment of alternative plots of smaller sizes. Direction 2 of the 3 May, 2023 WP2473\_2021.DOC High Court, therefore, to the extent of charging price from the consentees as prevailing on the date of draw of lots i.e., 27-3-1991, deserves to be set aside and substituted with the directions that the consentees on being allotted a particular plot of smaller size shall be charged the

same price which was prevailing at the time of original allotment of the plot in their favour. Necessary adjustment or refund of price, as the case may be, shall be given to them for the small size of plot allotted."

(emphasis supplied)

36. Mr. Hegde would contend that interim order would merge in the final order and if the PIL petitions were dismissed, the interim order as passed on the present petitions would be inconsequential is a difficult proposition to be accepted in the present facts. In supporting such proposition, Mr. Hegde relied on the decision of Amarjeet Singh & Ors. (supra). We do not agree with Mr. Hegde when he is canvassing such proposition relying on the decision of Amarjeet Singh. This for the reason that it is clearly seen that the petitioners have partly succeeded in their prayers, which pertained to their case of assertion of rights against reservation of the plots in question, having been turned down by a Division bench of this Court. Illustratively we have already noted prayer clause (a) in Writ Petition No. 2473 of 2021. Thus, the petitioners are not in the same position as that of the petitioners in the case of Amarjeet Singh & Ors. (supra). In such case, Amarjeet had claimed benefits under the interim order passed by the High Court, when the petitions itself stood dismissed before the High Court. Thus, the observations of the Supreme Court that no litigant can derive any benefit from mere pendency of a case in a court of law, as the interim order always merges in the final order to be passed in the case, 3 May, 2023 WP2473\_2021.DOC and if the writ petition is ultimately dismissed, the interim order stands nullified automatically and such party cannot be allowed to take any benefit of its own wrongs, by getting an interim order and thereafter blame the court, is inapplicable in the facts of the present case. The following observations of the Supreme Court as relied by Mr. Hegde, in our opinion, are wholly inapplicable in the facts and circumstances of the present case:

"16. In view of the fact that the respondents continued on a higher post under the orders of this Court for years together and even after dismissal of the petition filed by the State, and the exercise for making promotions was not undertaken by the State Authorities, the appellants should not suffer for no fault of theirs. It has fairly been conceded by learned counsel appearing for the respondents that had the exercise of making promotions been undertaken immediately after the order of this Court dated 19.8.1998, the appellants could have been promoted much earlier and they could have been senior to the respondents. Thus the question does arise as to whether appellants should be asked to suffer for the interim order passed by this Court in a case having no merits at all.

17. No litigant can derive any benefit from mere pendency of case in a Court of Law, as the interim order always merges in the final order to be passed in the case and if the writ petition is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of his own wrongs by getting interim order and thereafter blame the Court. The fact that the writ is found, ultimately, devoid of any merit, shows that a frivolous writ petition had been filed. The maxim "Actus Curiae neminem gravabit", which means that the act of the Court

shall prejudice no-one, becomes applicable in such a case. In such a fact situation the Court is under an obligation to undo the wrong done to a party by the act of the Court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralised, as institution of litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the Court. (Vide Shiv Shankar & Ors. Vs. Board of Directors, Uttar Pradesh State Road Transport Corporation & Anr., 1995 Suppl. (2) SCC 726; M/s. GTC Industries Ltd. Vs. Union of India & Ors., AIR 1998 SC 1566; and Jaipur Municipal Corporation Vs. C.L. Mishra, (2005) 8 SCC

423). 16.

18. In Ram Krishna Verma & Ors. Vs. State of U.P. & Ors., AIR 1992 SC 1888 this Court examined the similar issue while placing reliance upon its earlier judgment in Grindlays Bank Limited Vs. Income Tax Officer, 3 May, 2023 WP2473\_2021.DOC Calcutta & Ors., AIR 1980 SC 656 and held that no person can suffer from the act of the Court and in case an interim order has been passed and petitioner takes advantage thereof and ultimately the petition is found to be without any merit and is dismissed, the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralized.

(emphasis supplied)

37. Considering the above observations, it is not the case that the writ petition of the petitioners on reservation of the plots by the NMMC had stood dismissed and in such situation, the petitioners were asserting any advantage from the interim order having suffered a dismissal of the writ petition as in Amarjeet's case. In fact, it is quite contrary that the petitioners have succeeded in their prayers for reservation as noted by us in the foregoing paragraphs. Furthermore, Mr. Hegde is also not contending that the petitioners are taking advantage on a dismissed writ petition.

38. We may also observe that these were appropriate and fit cases for the Managing Director of CIDCO to exercise his authority under Regulation 8 of the New Bombay Disposal of Land Regulations (supra) to issue appropriate directives not to charge any delayed payment charges or interest from the petitioners when the allotment of plots itself was subject matter of protracted litigation.

39. In such context, we may usefully refer to the decision of the Supreme Court in Unitech Limited & Ors. vs. Telangana State Industrial Infrastructure 3 May, 2023 WP2473\_2021.DOC Corporation (TSIIC) & Ors.,<sup>3</sup> in which the Supreme Court recognized the applicability of provisions of Article 14 in contractual matters and more particularly, in a case of allotment of land in favour of Unitech Ltd. by the respondent-TSIIC. The allotment of land in such case was rendered inconsequential in view of TSIIC losing in the pending litigation in which it was held that TSIIC had no authority to make allotment of land in favour of Unitech, as it was not the owner of the land. It was held that in making an allotment of a nature to Unitech, which ultimately was rendered inconsequential, it was

legitimate for Unitech to invoke jurisdiction under Article 226 of the Constitution, as certainly the rights of Unitech as guaranteed under Article 14 of the Constitution stood violated. Moreover, the Supreme Court exercising its jurisdiction under Article 142 of the Constitution granted refund of entire amount of Rs.165 crores as paid by Unitech together with interest. Thus, certainly by virtue of interim orders passed by this Court, the situation as in Unitech's case, namely, of the petitioners paying full amount of lease premium on unpredictability of the allotments and/or existence of such shaky grounds stood avoided. More significantly the interim orders have continued to operate till date as accepted by the CIDCO, and hence the benefit of such orders has continued in favour of the petitioners till the time we are pronouncing the present order.

3 2021 SCC Online SC 99 3 May, 2023 WP2473\_2021.DOC

40. In the light of the above discussion, we are of the clear opinion that the petitions are required to be allowed. The Writ Petitions are accordingly allowed in terms of following orders:

(i) CIDCO is directed to accept the amounts of lease premium in two instalments as per the terms and conditions of allotment letters issued to the petitioners, to be paid by the petitioners within ten weeks from today without insisting on any delayed payment charges or interest, on such installments.

(ii) In the event, the amounts of lease premium as directed in clause (i) above are not deposited by the petitioners with the CIDCO, the CIDCO is permitted to take appropriate action as may be permissible.

(iii) It is declared that the petitioners shall be entitled to develop the plots subject to the terms and conditions of the allotment letter, and as may be permissible in law as per the development permission, which may be issued in favour of the petitioners.

41. Rule is made absolute in the above terms. No costs.

3 May, 2023 WP2473\_2021.DOC

42. In view of disposal of Writ Petitions, Interim Applications do not survive and the same are accordingly disposed of.

(R.N. LADDHA, J.)

(G. S. KULKARNI, J.)

3 May, 2023

