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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1597 OF 2010

IN

WRIT PETITION NO.1434 OF 2002

City & Industrial Corporation ..Applicant.

V/s.

New Bombay Merchant Gymkhana & Ors. ..Respondents.

Mr.G.S.Hegde with Mr.C.M.Lokesh i/b. G.S.Hegde & Asso. for the applicant in C.A.No.1597/10.

Mr.V.S.Gokhale, AGP the respondent-State.

Mr.A.A.Garge for the respondent No.2 in CA No.1597/10.

Mr.Devender Katyal, General Manager of the New Bombay Merchant Gymkhana is present.

**CORAM : A.S.OKA AND
A.K. MENON, JJ.**

DATED : 9TH MARCH, 2015

P.C. :-

1. Heard the learned counsel for the applicant, the learned counsel for the Municipal Corporation and the learned AGP for the State. Mr.Devendar Katyal, the General Manager of the New Bombay Merchant Gymkhana is present in the Court. The New Bombay Merchant Gymkhana is the petitioner in the disposed of Writ Petition No.1434 of 2002.

2. By judgment and order dated 19th August, 2003, the writ petition was disposed of by a Division Bench of this Court. Under the said order, this Court directed the Navi Mumbai Municipal Corporation to demolish the crematorium on Plot No.181 in Sector

12, Vashi. The Municipal Corporation was directed to hand over the vacant and peaceful possession of Plot No.181 to the petitioner M/s.New Bombay Merchant Gymkhana.

3. The contention of the applicant CIDCO is that on the basis of the letter dated 17th November, 2011 issued by the said Gymkhana, the CIDCO has taken over the possession of the Plot No.181 on 10th June, 2014.

4. Mr.Devendra Katyal, the General Manager of the New Bombay Merchant Gymkhana tenders a letter dated 3rd March, 2015 on record which is marked 'A' for identification. The letter is addressed to this Court by the President of the said Gymkhana. The letter authorises Mr.Devendra Katyal, the General Manager of the Gymkhana to appear and to make a statement that the Gymkhana is not interested in extending the lease in respect of the said Plot No.181. Mr.Devendra Katyal states that the said Gymkhana is no more interested in the said plot.

5. The prayer clause (a) of the application reads as under:-

“(a) The order dated 19-8-2003 passed in Writ Petition No.1434 of 2003 be modified and the Applicants herein be permitted to earmark the plot No.181, Sector-12, Vashi, Navi Mumbai, for the purpose of crematorium and be further permitted to take possession of the said plot from Respondent No.1 herein and

to hand over the same to Respondent No.2 herein for developing the same as crematorium. "

6. In paragraph 3 of the judgment and order dated 19th August, 2003, a reference has been made to the resolution by the Board of Directors of CIDCO dated 24th April, 1991 which provides that the said plot No.181 will be developed by making a garden and a children's park thereon. The said order records that the CIDCO would allot another plot to the Navi Mumbai Municipal Corporation for construction of a crematorium.

7. In view of the resolution of the CIDCO recorded in the said judgment and order, while disposing of this application, a permission cannot be granted to CIDCO to ear-mark the plot No.181 in Sector 12 in New Bombay for crematorium especially when PIL No.69 of 2012 is pending in this Court where a prayer is made for demolition of the crematorium on P5lot No.181.

8. Admittedly, CIDCO is in possession of Plot No.181 in Sector 12. The New Bombay Merchant Gymkhana has made a statement that the said Gymkhana is no more interested in the said plot of land.

9. Therefore, we dispose of the application by passing the following order:-

- (i) We accept the statement made by New Bombay Merchant Gymkhana that the said Gymkhana is no longer interested in plot No.181 in Sector 12, Vashi, Navi Mumbai and that the possession of the said plot has been handed over to the CIDCO. Hence, the allotment of the Plot No.181 to the said Gymkhana does not survive;
- (ii) The issue regarding the user of Plot No.181 in Sector 12 at Vashi, Navi Mumbai is expressly kept open in view of the pendency of PIL No.69 of 2012;
- (iii) The application is disposed of in the above terms.

(A.K.MENON, J.)

(A.S.OKA, J.)