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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9550 OF 2012

JN 3 Building Nos.36-38 Apartment
Owners Association

... Petitioner

Vs.

The City and Industrial Developmnt
Corporation Limited & Ors.

... Respondents

Ms. Kiran Bagalia i/by Mr. K.J. Reddy a/w Priyanka Vegad, for the
Petitioner.

Mr. C.M. Lokesh i/by Mr. G.S. Hegde & Associates, for the Respondent
No.1.

Mr. V.S. Gokhale, AGP, for Respondent No.2.

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

DATE : 14th JANUARY, 2015

PC.

. Heard the learned counsel appearing for the Petitioner, the
learned counsel appearing for the first Respondent and the learned AGP
representing the second Respondent. This Petition was heard on the
earlier date. With a view to enable the parties to take instructions, it
was adjourned till today with a notice to the parties that the same will
be disposed of finally. The Petitioner is the Association of Apartment
Owners of building Nos.36 to 38 situated at Sector 9, Vashi, Navi
Mumbai. There were six buildings which were constructed by the first

Respondent – the City and Industrial Development Corporation Limited. It appears that the third Respondent was constituted as the Planning Authority under the Maharashtra Regional and Town Planning Act, 1966 (for short “the MRTTP Act”) under the notification dated 15th December, 1994. The third Respondent served a notice calling upon the Petitioner - Association to demolish the said buildings. The notice was issued under Section 264 of the Maharashtra Municipal Corporations Act, 1949 by alleging that the buildings were in dangerous condition.

2. Building Nos.36 to 38 are the subject matter of the same notice. An application was made on 9th August, 2012 by the Petitioner to the Manager, Town Services of the first Respondent – the City and Industrial Development Corporation of Maharashtra Ltd. (for short “CIDCO”) . In the said application, it was stated that No Objection Certificate (for short “NOC”) was granted by the first Respondent to the Petitioner in relation to all six buildings vide communication dated 2nd December, 2004. It is stated that out of the six buildings, three have been already redeveloped. A request was made to CIDCO to calculate the premium payable as a condition for grant of NOC permitting redevelopment of the remaining three buildings.

3. The grievance in this Petition is that the first Respondent has not issued NOC as yet.

4. The learned counsel appearing for the Petitioner invited our attention to the notification dated 15th December, 1994 which is issued in exercise of powers under Section 154 of the MRTP Act by the State Government. Under the said notification, the third Respondent was directed to act as the Planning Authority in respect of certain portions of Navi Mumbai as specified in the Schedule to the said notification. The third Respondent was empowered to exercise all the powers of the Planning Authority in relation to the said areas under Chapters III and IV of the MRTP Act. Correspondingly, the power of the first Respondent to act as the Planning Authority was withdrawn. The learned counsel pointed out that a direction was issued to the third Respondent to insist on the developers producing NOC from the first Respondent to enable the first Respondent to recover lease premium.

5. The learned counsel appearing for the first Respondent states that the application dated 9th August, 2012 for grant of NOC is pending which will be decided by the first Respondent.

6. We must note here that on 2nd December 2005, a notice was served by the third Respondent Corporation under Section 264 of the said Act of 1949 declaring that the buildings have become dangerous and, therefore, occupants were informed to vacate the said

buildings. The land below the said buildings is vested in the first Respondent - CIDCO. The first Respondent has granted lease of the land below the buildings for a period of 60 years. The Petitioner approached the third Respondent - Corporation for grant of temporary accommodation by stating that quality of construction was inferior. The said request was turned down by the third Respondent by a communication dated 3rd June, 2011.

7. Thereafter, the aforesaid application dated 9th August, 2012 has been made. From the perusal of the notification dated 15th December, 1994 and in particular Clause 4 thereof, it is apparent that for grant of development permission by the third Respondent Corporation, NOC of first Respondent will have to be produced only with a view to ensure that the first Respondent can recover the lease premium, if any, payable by the lessee. As far as the grant of development permission under the MRTP Act is concerned, the first Respondent has no role to play and it is for the third Respondent Corporation to grant the permission in accordance with law.

8. Considering the facts of the case, the first Respondent ought not to have kept the application pending for such a long time, as the requirement of the NOC has been incorporated only to ensure that

the first Respondent is able to recover lease premium. The first Respondent can always grant NOC subject to Applicant paying lease premium as demanded within the specified time. The learned counsel appearing for the Petitioner states that the Petitioner is ready and willing to pay the premium at the rates prevailing on 9th August, 2012.

9. We find from the Petition that on 23rd August, 2012 the Petitioner made an application to the Managing Director of the first Respondent inviting his attention to the application dated 9th August, 2012. In the said application, a request was made to expedite the grant of NOC and the demand of payment of the lease premium. A notice was issued by this Court on 5th November, 2012 when the first Respondent was represented. However, there is no reply filed by the first Respondent to this Petition.

10. When the Petitioner had offered in the application dated 9th August, 2013 to pay lease premium as per the demand of the CIDCO, in our view, the CIDCO ought to have granted NOC within a reasonable time.

11. Accordingly, we dispose of the Petition by passing the following order :-

ORDER

- (i) We direct the first Respondent to take appropriate decision on the application dated 9th August, 2012 by determining the lease premium, if any, payable by the Petitioner as on 9th August, 2012. Within a period of one month from today, the first Respondent shall issue NOC to the Petitioner incorporating the demand of lease premium payable as on 9th August, 2012. NOC so issued shall be specifically subject to payment of the lease premium by the Petitioner within the time stipulated in the NOC;
- (ii) In the event, the first Respondent fails to issue NOC in terms of the above order on or before expiry of a period of two months from today, we direct the third Respondent to process the application made by the Petitioner for grant of development permission in accordance with law without insisting upon the NOC of the first Respondent;
- (iii) The Petition is disposed of on above terms.

(A.K. MENON, J)

(A.S.OKA, J)