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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.891 OF 2003

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|--|-----------------|
| 1) Kalani Builders and Developers Pvt. Ltd. | |
| 2) Coral India Finance and Housing Limited | ... Petitioners |
| Versus | |
| 1) State of Maharashtra, | |
| 2) The Collector (M.S.D.), | |
| 3) The Sub-Divisional Officer, | |
| 4) The Municipal Corporation of Greater Mumbai | ... Respondents |

Mr. Pramodkumar i/by M/s. Pramodkumar & Co., for the Petitioners.
 Ms. Imam Calcuttawala, AGP, for the Respondent Nos.1, 2 and 3.
 Mrs. Shobha Ajitkumar, for Respondent No.4 – BMC.

**CORAM : A.S. OKA &
V.L. ACHLIYA, JJ.**
DATE : 14th OCTOBER, 2015

ORAL JUDGMENT (Per A.S. Oka, J.)

. Heard the learned counsel appearing for the Petitioners and the learned AGP for Respondent Nos.1 to 3. We have heard the learned counsel appearing for the fourth Respondent. In prayer (b) of the Petition, the challenge is to the directions issued by the State Government, Revenue and Forest Division on 31st October, 2001 (Exhibit–R) to the Commissioner of the Mumbai Municipal Corporation. The direction was not to permit construction on the government lands without prior permission or NOC of the Collector.

2. The legality and validity of the same Directive of the State

Government was questioned before this Court in Writ Petition No.3119 of 2003 in the case of Hiren Bharani and others v. State of Maharashtra and others which was decided on 5th October, 2006 by a Division Bench. Therefore, as far as the aforesaid challenge in terms of prayer clause (b) is concerned, the same will be governed by the said Judgment and Order dated 5th October, 2006. As far as the prayer clause (c) is concerned, in view of the decision of the Division Bench in Writ Petition No.3199 of 2003, the said prayer will be taken care of.

3. The other challenge in this Petition in the form of prayer clause (a) is to the communication dated 31st October, 2001 issued by the Sub-Divisional Officer, Mumbai Suburban District to the first Petitioners by which a demand was made for payment of a sum of Rs.2,50,000/- being unearned income in terms of Government Resolution dated 25th November, 1957. A direction was given to the Petitioners to desist from selling any more land without prior permission of the Government. By the same communication, the first Petitioners was called upon to remain present in the office of the Sub-Divisional Officer on 12th November, 2001 along with the documents. The contention raised in the Petition is that the said communication directing the Petitioners to deposit the amount and to desist from selling the land was issued without giving an opportunity of hearing to the Petitioners.

4. Rule was issued on this Petition on 16th April, 2003 with an interim order in terms of the minutes of order passed by this Court. As per the impugned demand in terms of communication dated 31st October, 2001 (Exhibit-N to the Petition), the first Petitioner was directed to deposit a sum of Rs.2,50,000/-. Various undertakings were recorded in the minutes of order. On deposit of a sum of Rs.2,50,000/- by the first Petitioner with the Collector, the Municipal Corporation was granted liberty to consider the application made by the first Petitioner for grant of Occupation Certificate by ignoring the Government communication dated 31st October, 2001 (Exhibit – N to the Petition). Accordingly, undertaking dated 28th April, 2013 was filed by one Shri Suresh T. Kalani on behalf of the Petitioners. It also records that a sum of Rs.2,50,000/- was deposited with the Collector.

5. Apart from the challenge to the said communication dated 31st October, 2001 (Exhibit-N to the Petition), on the ground of breach of principles of natural justice, the contention of the first Petitioner is that the land in question was not granted on a restricted tenure and the said communication erroneously proceeds on the footing that the first Petitioner is an occupant Class -II.

6. We have heard the learned AGP appearing for the first to third Respondents. There is no reply filed by the State Government

placing on record whether any opportunity of being heard was granted to the Petitioners or any of them before issuing the impugned communication dated 31st October, 2001.

7. We have carefully perused the communication dated 31st October, 2001 at Exhibit-N. We find that though a direction was issued to deposit a sum of Rs.2,50,000/- and a direction was given to the first Petitioner to desist from selling any more land without prior permission of the Government, the first Petitioner was called upon to remain present for personal hearing. Even the impugned communication does not state that before arriving at the conclusion that the first Petitioner was Occupant Class II and that the first Petitioner has committed breaches of the terms and conditions of the agreement executed in Form-HH, any opportunity of being heard was granted to the Petitioner. It is obvious that a finding on the tenure of the land held by the Petitioners and a finding regarding the breaches committed by the Petitioners could not have been recorded without giving an opportunity of being heard to the Petitioners.

8. As the impugned communication records that the first Petitioner was called upon to remain present for hearing, the said communication can be treated as a show cause notice and appropriate

order can be passed by the Sub-Divisional Officer after giving an opportunity of being heard to the Petitioners. Till the order is passed on the show cause notice, an amount of Rs.2,50,000/- shall lie deposited with the office of the Collector.

9. Hence, we dispose of the Petition by passing the following order :-

ORDER

- (i) As far as the challenge to the Government Directive dated 31st October, 2001 (Exhibit-R) is concerned, this Petition will be governed by the directions issued in terms of the paragraph 6 of the Judgment and Order dated 5th October, 2006 in Writ Petition No.3119 of 2003 (Hiren Bharani and others v. State of Maharashtra and others);
- (ii) We direct that the communication dated 31st October, 2001 (Exhibit-N to the Petition) shall be treated as a show cause notice;
- (iii) We direct the Petitioners or their representative to appear before the Sub-Divisional Officer, Mumbai Suburban District on 17th November, 2015 at 11.00 am. The Petitioners shall file a detailed reply to the show cause notice and shall produce the documents in support, if any;

- (iv) After giving an opportunity of being heard to the Petitioners, the Sub-Divisional Officer shall pass appropriate order on the show cause notice as expeditiously as possible and in any event on or before 31st January, 2016;
- (v) Till the disposal of the show cause notice by passing an order as aforesaid, the amount of Rs.2,50,000/- deposited by the Petitioners shall remain with the office of the Collector;
- (vi) Depending upon the order which may be passed on the show cause notice, the Petitioners can always apply for refund of the said amount to the office of the Collector;
- (vii) The order passed on the show cause notice be served to the Petitioners. If the said order be adverse to the Petitioners, the same shall not be acted upon for a period of one month from the date on which the order is served upon the Petitioners;
- (viii) All contentions on merits of the communication at Exhibit-N are expressly kept open;
- (ix) Rule is made partly absolute on above terms;
- (x) There will be no order as to costs.

(VL. ACHLIYA, J)

(A.S. OKA, J)