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

WRIT PETITION NO. 1504 OF 2016

Palai Developers Pvt. Ltd. & Ors.

...Petitioners

Vs.

M.C.G.M. & Ors.

...Respondents

Mr. Milind Sathe, Senior Advocate a/w. Mr. Sanjay
V. Kadam, Ms. Apeksha Sharma, Sanjeel Kadam,
Mr. Deepak Enakphale i/b. Kadam & Company,
Advocates for the Petitioners

Mr. A.A. Kumbakoni, Sr. Advocate a/w. Mr. Ashutosh
Gavnekar, Ms. Shobha Ajitkumar, Advocates for the Respondent
all the Respondents, BMC

CORAM : SHANTANU S. KEMKAR &

M.S. KARNIK, JJ.

DATED : 13TH JULY, 2016

P.C. :

Parties through their Counsel. Through this Petition
filed under Article 226 of the Constitution of India the
Petitioners have challenged the impugned demand notice
dated 27th July, 2015 **Exhibit-M** issued by the Municipal
Corporation, Mumbai.

2. The grievance of the Petitioners is that in terms of the

liberty granted by this Court vide order dated 13th March, 2015 in Notice of Motion Nos. 160 of 2015, 173 of 2014, 175 of 2014 and 635/2014 in Writ Petition No. 1251 of 2014 the Petitioners had submitted the discrepancies in the chart shown in paragraph 12 of the order dated 5th February, 2015 passed in various Writ Petitions including Writ Petition No. 1251 of 2014. However, inspite of there being a clear direction to the Municipal Corporation to take into consideration the discrepancies as pointed out by the Petitioners before finalising the amount of transfer premium and interest, if any, payable thereon, the Municipal Corporation has issued the impugned demand notice without advertng to the grounds raised by the Petitioners in their various representations **Exhibits-K and N**.

3. We have gone through the decision taken by the Municipal Corporation in regard to the Petitioners' grievance and we find that the Municipal Corporation has not passed any speaking order in regard to the various grounds raised by the Petitioners pointing out the discrepancies.

4. Learned Senior Counsel appearing for the Municipal Corporation submits that so far as discrepancies in the calculations they have been addressed and the amount has been reduced and the other discrepancies may not be required to be decided.

5. Having considered the submissions made by the learned Counsel for the parties and having gone through the impugned demand notice we find that the Municipal Corporation has not said anything about various grounds raised by the Petitioners.

6. In the circumstances we set aside the impugned demand notice and remand back the matter to the Competent Authority of the Corporation who shall take decision on the Petitioners' grievance in terms of the liberty granted by this Court on 13th March, 2015 and pass reasoned order in accordance with law as expeditiously as possible.

7. At this stage learned Senior Counsel for the Petitioners on instructions states that the Petitioners are willing to deposit the amount as per the impugned demand made by the Corporation under protest and subject to the outcome of the decision as may be taken by the Respondents and subject to the decision of the Writ Petition challenging the Constitutional validity of 2012 amendment. He submits that in that eventuality the Corporation be directed to issue necessary development permission and clearances. Mr. Kumbakoni, learned Senior Counsel appearing for the Corporation submits that if the Petitioners deposits the amount as demanded by the Corporation even under protest, the Corporation shall grant necessary development permission and clearances in regard to the Petitioner No.1's property described in clause (d) of the Petition.

8. In view of the aforesaid stand taken by the parties we grant liberty to the Petitioners to deposit under protest the entire amount claimed by the Respondent Corporation in the

impugned demand notice. On such deposit being made the Corporation shall issue the necessary development permission and clearances in accordance with law, subject to any other objection except non-payment of the impugned amount. It is made clear in case the Petitioners succeeds the amount so deposited by the Petitioners shall be refunded by the Corporation to the Petitioners with interest @ 12% p.a from the date of the decision till payment.

9. With the aforesaid direction the Petition stands disposed of.

(M.S. KARNIK, J.)

(SHANTANU S. KEMKAR, J.)