

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

WRIT PETITION (L) No. 2103 OF 2017

Gulmohar Area Societies Welfare
Group and another

...Petitioners.

Versus

The Municipal Corporation of
Greater Mumbai

...Respondents.

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Mr. Navroz Seervai, Senior Counsel a/w Mr. Ranbir Singh and Ms. Anagha Mhatre and Ms. Neha Sonawane i/b. Anand and Anand & Khimani for the Petitioners.

Mr. Ravi Kadam, Senior Counsel a/w Mr. Yadunath Chaudhari, Mr. Chinmaya Acharya i/b. Sumit Phatale for Respondent no.4.

Mr. A.Y. Sakhare, Senior Counsel a/w Mr. Joel Carlos, and Ms. Pallavi Thakar for MCGM.

Mr. Venkatesh Dhond, Senior Counsel a/w Mr. Yadunath Chaudhari i/b. Sumit Phatale for Respondent no.5.

Mr. Rohan Kadam a/w Mr. Chinmaya Acharya for Respondent nos. 6 to 8.

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***CORAM : Smt. Vasanti A Naik &
Riyaz I. Chagla, JJ.***

DATE : 23rd November, 2017.

P.C. :

By this writ petition, the petitioner-Gulmohar area societies welfare group has sought a direction against the respondent no.1-Mumbai Municipal Corporation to forthwith amend/modify/reissue the sanctioned plan for the redevelopment of Dr. R.N. Cooper hospital so as to delete the shops of the respondent nos. 4 and 5 from their current location. A direction is sought by the petitioner against the respondent no.1-Corporation

to withdraw and cancel the decision dated 08.10.2015, by which it had decided to retain the existing structures of the respondent nos. 4 and 5. Directions are sought against the respondent no.1-Corporation to withdraw and cancel the permissions, dated 24.09.2009 and 03.03.2010 granted to Amar medical shop and Amar juice center. Certain other ancillary prayers for the demolition and removal of the structures of the respondent nos. 4 and 5 from their present location are also made.

Few facts giving rise to the petition are stated thus:-

Since certain structures-stalls located on V.M. road, Vile Parle, Mumbai were causing obstruction in the project of road widening, they were demolished for the purpose of widening of V.M. road in the year 1984-1985. Applications/proposals were made by the stall owners for allotment of alternate sites. The Municipal Commissioner, by the order dated 04.05.1995 granted the proposal of the owners of three stalls that were demolished for road widening. Allotment letters for shifting of the three structures were issued by the then officer, permitting the shifting of the three shops to Gulmohar road inside the compound of Cooper hospital. The three stalls were amalgamated into two shops that were sanctioned to the respondent nos. 4 and 5 as per sanction letter dated 19.02.1996. The Deputy Municipal Commissioner, by the order dated 10.10.1996 granted permission for the change of user of the business activity of the respondent no.4 by permitting it to sell snacks. In the year 1996, a writ petition was filed by Mr. K.P. Naik, challenging the permission-allotment of the stalls in favour of the respondent nos. 4 and 5 but

the said writ petition was dismissed. In the year 2005, when the work of widening of the road was entrusted to the MMRDA, notices were issued by the MMRDA to the respondent nos. 4 and 5 that their structures were standing on the footpath-pavement and that the same should be removed. The respondent nos. 4 and 5 challenged the notice of MMRDA, dated 24.08.2005 by filing L.C. Suit nos.3466/2005 and 3467/2005 before the City Civil Court at Bombay. In the said suits, order directing the parties to maintain status quo was passed. During the pendency of the said suits, the respondent nos. 4 and 5 wrote a letter to the Deputy Municipal Commissioner for permission to shift the structures at a little distance from the site at which they were located inside the compound of Cooper hospital. It is the case of the petitioner that since certain conditions in the license were violated by the respondent nos. 4 and 5, notices were issued to them by the officers of the health department. Yet another suit was filed by the respondents before the City Civil Court at Bombay and since the application made by them for grant of interim relief was rejected, an appeal against the interlocutory order, bearing Appeal from Order (stamp) no.4528/2009 was filed in the High Court. During the pendency of the said Appeal against Order, since the Corporation had granted permission to the respondent nos. 4 and 5 to relocate the shops at a site that was at a distance of 328 feet from the site on which they existed, the Appeal against Order was disposed of. It was observed by this Court in the Appeal against Order that the Mumbai Municipal Corporation would not be entitled to change the location allotted to the respondent nos. 4 and 5 under letter dated 24.09.2009. A direction was issued

against the respondent Corporation not to demolish the then existing structures of the respondent nos.4 and 5 until the structures were constructed at the newly allotted site and were complete in all respect. It was observed that the respondent nos. 4 and 5 would not be precluded from applying to the Municipal Commissioner for shifting the structures, a few feet away from the footpath on Gulmohar road in case of any unforeseen difficulty. In pursuance of the permission granted by the Corporation and its authorities to the respondent nos. 4 and 5, the respondent nos. 4 and 5 are running Amar juice centre and Amar medical stores at the site of their relocation. It is the case of the petitioner that being aggrieved by the action on the part of the Corporation of permitting the respondent nos. 4 and 5 to carry on their business within the compound of Cooper hospital, the petitioner had made a representation to the Hon'ble Chief Minister. It appears that again an inspection was carried out and it was found that the respondent nos. 4 and 5 could operate from their shops inside the compound of the Cooper hospital. The proposal for redevelopment of Cooper hospital was being considered in the year 2009 and it was sanctioned in the year 2015. In the plans for redevelopment of the hospital and medical college, the structures-stalls of Amar juice centre and Amar medical stores were considered for computing the F.S.I. The petitioners have filed the instant writ petition in the month of August, 2017 seeking the aforesaid relief.

Mr. Seervai, the learned senior counsel for the petitioner submitted that that the action on the part of the respondent-Corporation of allotment of the land to the respondent nos. 4 and

5 for running Amar juice centre and Amar medical stores is in violation of the Development Control Regulations for Greater Mumbai, 1991, the provisions of Section 92 of the Mumbai Municipal Corporation Act and the relevant provisions of the Maharashtra Regional and Town Planning Act. It is submitted that there was no permission for the development/construction of the stalls-shops under the provisions of Maharashtra Regional and Town Planning Act. It is submitted that the allotment of the land inside the Cooper hospital compound to the respondent nos. 4 and 5 for running the juice centre and the medical store is violative of the provisions of Article 14 of the Constitution of the India, in as much as no tenders were floated before permitting the respondent nos. 4 and 5 to operate in the Cooper hospital compound. It is submitted that the action on the part of the respondent-Corporation of allotting the land to the respondent nos.4 and 5 without charging any ground rent and without following the procedure under Section 92 of the Maharashtra Municipal Corporation Act and the Development Control Regulations is clearly illegal. It is stated that the Corporation has indulged in corruption in the matter of allotment of the lands to the respondent nos. 4 and 5. It is submitted that it is well settled that the Government cannot transfer the property in favour of particular persons without following the due process of law and the provisions of the relevant Acts and Rules. It is submitted that the Corporation cannot rely on Development Control Regulation nos. 11(2) and 11(3) and Development Control Regulation no. 52 for permitting the respondent nos. 4 and 5 to carry on their business in the premises inside the compound of Cooper hospital.

It is submitted that the Hon'ble Supreme Court and this Court has time and again held that the structures that are developed without necessary permissions should be demolished. It is submitted that when a brazen illegality is pointed out to the Court, delay would not come in the way of the court while ensuring that the illegality is not perpetuated. Reliance is placed on the judgments reported in **2011(2) BCR 569, (2009) 15 SCC 705, 2012(3) BCR 565, (1999) 6 SCC 464 and (1991) 4 SCC 54** for canvassing that when a land is reserved for a particular purpose under the development plan, the same cannot be utilized for another purpose. It is submitted that in the aforesaid judgments, the Hon'ble Supreme Court and this court had considered the mandatory nature of the reservations in the development plan and had directed the demolition of the illegal structures after quashing and setting aside the orders permitting the user of the land from one purpose to the other. It is submitted that in an unreported judgment in a couple of writ petitions bearing writ petition no.2223/2013 and another, this Court had reiterated the principles pertaining to the mandatory nature of the provisions of the relevant Acts and the Development Control Regulations and had held that the illegal construction beyond the 43th floor above the plinth level is illegal and the same should be demolished, if not regularized. Reliance is placed on the judgments reported in **(1980) 4 SCC 1** and **2008 (4) Mh.L.J. 370** to canvas that a grant must satisfy the dual test of reasonableness and where arbitrariness in state action is exposed, the delay. per se is not material. Reliance is also placed on the judgment reported in **1974 (2) SCC 506** to submit that illegality

is incurable. Also, the judgment reported in **1996 (2) Mh.L.J 361** is cited to submit that the courts would be loath to reject the petition simply on the ground of delay. It is submitted that the action of the Corporation of granting permission to the respondent nos. 4 and 5 to construct the stalls in Cooper hospital compound is illegal and the stalls are causing nuisance to the people in that locality. It is stated that in the circumstances of the case, directions may be issued against the Corporation to demolish the structures of the respondent nos. 4 and 5 and to modify the plans for redevelopment of Cooper hospital and medical college.

Mr. Sakhare, the learned senior counsel for the Corporation has opposed the prayers made in the writ petition. It is submitted that the petition suffers from laches. The learned senior counsel took this Court through the prayer clause in the petition to point out that permissions granted to the respondent nos. 4 and 5 in the year 2009 are sought to be challenged by filing the writ petition as belatedly as in August, 2017. It is submitted that the relocation of the persons affected by road widening and the other projects of the Corporation is permissible under the policy of the Corporation and in the year 1995-1996, the respondent nos. 4 and 5 were granted alternate sites within the boundary of the Cooper hospital. It is submitted that though a writ petition was filed by Mr. K.P. Naik for challenging the permissions granted in favour of the respondent nos. 4 and 5 to conduct the business inside the Cooper hospital compound, the same was dismissed in *limine*. It is submitted that necessary permissions were granted to the respondent nos. 4 and 5 for the construction of the shops inside the Cooper hospital

compound and the dimensions of the shops were also specified. It is stated that after the MMRDA proposed to widen the road in 2005 and the structures of the respondent nos. 4 and 5 were affected, they were permitted to further shift at a distance of 328 feet in the Cooper hospital compound. It is submitted that Development Control Regulation no. 52(1)(B) would apply to the case in hand and it would also be necessary to consider Development Control Regulation no. 52(iv)(xiii) that provides that permission could be granted for running a restaurant, eating house, cafeteria, ice cream parlour and milk bars with total area to the extent of 200 Sq. Mtrs. in a residential zone. It is submitted that the area permitted to be used by the respondent nos. 4 and 5 is less than 200 Sq. Mtrs. It is submitted that vague and general allegations of corruption are made in the writ petition without joining any officer of the Corporation to the petition, in his personal capacity. It is submitted that in the Appeal against Order bearing no.4528/2009, this Court had directed the Bombay Municipal Corporation not to change the location of the site allotted to the respondent nos. 4 and 5 by the letter dated 24.09.2009, i.e, the site on which the respondent nos. 4 and 5 are presently running their shops. It is stated that in the note prepared by the Assistant Commissioner, K/West, dated 09.07.2009, it is clearly observed that the office of the Assistant Commissioner does not have any objection for shifting the two structures at the proposed site inside the Cooper hospital compound. It is stated that the said order was passed after inspecting the site and considering the other aspects of the matter. It is submitted that since the respondent nos. 4 and 5 were

affected by the project of road widening, the provisions of the Maharashtra Regional and Town Planning Act cannot be strictly applied as permissions were granted to the respondent nos. 4 and 5 as per the policy of the Corporation for relocation of project affected persons.

Mr. Kadam, the learned senior counsel appearing for the respondent no. 4 submitted that the writ petition suffers from laches and is liable to be dismissed, as the respondent nos. 4 and 5 were relocated in the structures inside the Cooper hospital compound in 1996. Reliance is placed on the order dated 01.06.1995 to submit that the construction of the shops was made as per the specifications in the permissions. It is submitted that the petitioner had secured the information pertaining to the nature of the licenses and the permissions granted to the respondent nos. 4 and 5 in a query under the Right to Information Act on 14.02.2007 and the petitioner and its members were clearly aware of the grant of permission to the respondent nos. 4 and 5. It is stated that when the application of the respondent nos. 4 and 5 for shifting of the stalls was taken up by the Corporation authorities, one of the members of the petitioner had participated in the proceedings and had made a representation that permission could be granted to the respondent nos. 4 and 5 to run their shops at a site near the morgue on Sant Dyanshwar road. It is submitted that it cannot be said in the aforesaid set of facts that there is only some delay in filing the writ petition as the petition suffer from laches and the delay of nearly ten years is not explained, much less satisfactorily. It is submitted by referring to the note of the

Assistant Commissioner, K/West, dated 09.07.2009 that the office of the Assistant Commissioner had no objection for shifting the two structures at the place on which they are now located. The learned counsel sought for the dismissal of the writ petition.

On hearing the learned counsel for the parties and on a perusal of the relevant documents annexed to the petition, it appears that the petition suffer from laches. The respondent nos. 4 and 5 were carrying on business in their 'eligible' structures on V.M. road when they were demolished in the year 1995, and they were permitted to shift the structures inside the compound of the Cooper hospital. The permission in that regard was granted vide order dated 31.05.1995. In the year 1996, three shops were converted into two as per the sanction of DMC (Zone III) by the order dated 19.02.1996. In one of the shops, the business of eating house was carried on and the other shop was used as a medical store. By the order dated 10.10.1996, Amar juice centre was permitted to prepare and sell snacks after the health department granted an eating house license to Amar juice centre under Section 314 of the Mumbai Municipal Corporation Act. The respondent nos. 4 and 5 were conducting their business inside the Cooper hospital compound since 1995-1996 when in the year 2005, the MMRDA served a notice on the respondent nos. 4 and 5 that they should remove their shops from the footpath. The notices were challenged by the respondent nos. 4 and 5 in the city civil Court at Mumbai. An order of status quo was granted in favour of the respondent nos. 4 and 5. In January, 2009, a notice was served by the officers of the health department on the

respondent nos. 4 and 5 in respect of certain alleged violations and the respondent nos. 4 and 5 challenged the said notice in the city civil Court at Mumbai. Though the city civil Court had refused to grant interim relief in favour of respondent nos. 4 and 5, in an Appeal against Order, bearing stamp no.4528/2009 challenging the order rejecting the interim relief, this Court had directed the respondent-Corporation not to change the location allotted to the respondent nos. 4 and 5 by the letter dated 24.09.2009, which is the site on which the shops are presently located. Hence, by the order in the Appeal from Order, bearing stamp no.4528/2009, the Court permitted the allotment of the site to the respondent nos. 4 and 5 by the order of the Corporation, dated 24.09.2009. The Court also permitted the respondent nos. 4 and 5 to apply to the Municipal Commissioner for shifting the shops a few feet away on V.M. road in case of any unforeseen difficulty. It is conspicuous to note that the petitioner was aware of the said developments as the members of the petitioners had made specific queries to the Corporation under the Right to Information Act, 2005 in the year 2007 and the petitioner had also made a representation to the Hon'ble Chief Minister in the year 2008-2009 seeking the removal of the stalls-shops of the respondent nos. 4 and 5 from the existing location. The members of the petitioner had participated in the proceedings in the matter pertaining to the applications of the respondent nos.4 and 5 for grant of alternate sites in pursuance of the notice served on them by the MMRDA for the removal of the shops-structures from the site on which they were located since 1995-1996. It is clear that the respondent nos. 4 and 5 were carrying on their business in the Cooper hospital compound for

nearly 22 years before this writ petition was filed in August, 2017. Some of the members of the petitioner had asked the Municipal Corporation to shift the shops of the respondent nos. 4 and 5 near the morgue. We however find from the affidavit of the Corporation and its authorities that apart from the respondent nos. 4 and 5 certain doctors had made a representation that the shops of the respondent nos. 4 and 5 should not be shifted near the morgue as it would give rise to health issues. We fail to fathom why the petitioner did not take any action against the respondent nos. 4 and 5 since the year 1996 though the respondent nos. 4 and 5 were carrying on their business in the Cooper hospital compound since then. More than ten years earlier, the petitioner apparently appears to have initiated some steps against the respondent nos. 4 and 5 and still the petitioner chose not to institute any proceedings against the respondent nos. 4 and 5 in any Court or forum till 2017. We find that in the year 1996 when Mr. K.P. Naik had filed a writ petition challenging the permissions granted to the Respondent nos. 4 and 5 to construct the shops in the Cooper hospital compound, the said writ petition was not favorably considered and was dismissed in limine. The petitioner appears to be aware of the said proceedings as the said facts are averred in the writ petition. There is a delay of more than twenty years in approaching this Court for challenging the permissions granted to the respondent nos. 4 and 5 in the year 1996 for carrying on the business in the Cooper hospital compound. We find from the order passed by this Court in the Appeal against Order, bearing stamp no.4528/2009 that the Corporation was restrained from changing the location allotted to the respondent nos. 4 and 5, vide

letter dated 24.09.2009, i.e, the present site. It cannot be said in the circumstances of the case that there is no delay in filing the writ petition. We find that the petition suffers from laches and the judgment reported in **2008 (4) Mh. L.J. 370** cannot come to the rescue to the petitioner while canvassing that where arbitrariness in State action is exposed, delay per se is not material. In fact ,in the judgment reported in **1996 (2) Mh. L.J. 361** and relied on by the learned counsel for the petitioner it is observed that the Court would not reject the petition simply on the ground of delay unless there are laches.

Apart from the fact that the petition is liable to be dismissed on the ground of laches, it would be necessary to hold that in the circumstances of the case, it cannot be said that the Corporation had committed any serious illegality in allotting the land inside the Cooper hospital compound to the respondent nos. 4 and 5. The structures of the respondent nos. 4 and 5 on V.M. road were demolished for road widening and since they were 'eligible structures', the respondent nos. 4 and 5 were entitled for rehabilitation and relocation at some other site. Since the shops-structures were 'eligible structures', the respondent nos. 4 and 5 were rehabilitated and relocated on Gulmohar road in the compound of the Cooper hospital. From the permissions and licenses that are placed on record, it appears that the respondent nos. 4 and 5 were permitted to construct/erect the shops inside the Cooper hospital compound in the year 1996 as per the dimensions mentioned in the relevant orders. It appears that by the order dated 24.09.2009, Amar medical store was permitted to construct

a shop in the Cooper hospital compound, as per the dimensions that were clearly specified. Similarly, permission was granted to Amar juice centre to construct the shop with specified dimensions in the Cooper hospital compound in the year 2009. Merely because the permissions are not granted, strictly under the provisions of the Maharashtra Regional and Town Planning Act, it cannot be said in the circumstances of the case that the permission to make the construction was not granted. As pointed out on behalf of the Corporation the present case pertains to the rehabilitation of the occupants of the 'eligible structures' under the policy of the Corporation to resettle the project affected. Since the structures of the respondent nos. 4 and 5 were found to be 'eligible' and that is not disputed by the petitioner, they were permitted to relocate the shops within the Cooper hospital compound. We find that the Corporation authorities had not only granted permission to the respondent nos. 4 and 5 to make the construction inside the Cooper hospital compound but, we further find from the documents available on record that since 2009, all the required licenses are issued in favour of the respondent nos. 4 and 5. It appears that some of the licenses issued in favour of respondent nos. 4 and 5 are valid up to October, 2018 and some others till 2020. We do not find any merit in the submission made on behalf of the petitioner that the structures of the respondent nos. 4 and 5 should be demolished as the same were permitted to be constructed in brazen violation of the provisions of Section 92 of the Mumbai Municipal Corporation Act. On a reading of Section 92 of the Act, it appears that the said provision pertains to the disposal of the property be sale, lease etc. It is not the case of

the Corporation that a lease is created in favour of the respondent nos.4 and 5. We do not find from the documents annexed to the petition and the affidavit-in reply that the site on which the respondent nos. 4 and 5 were permitted to erect the structures was leased to the respondent nos. 4 and 5. In fact, by the order passed by this Court in the Appeal against Order, bearing stamp no.4528/2009 the respondent nos. 4 and 5 were permitted to apply to the Municipal Commissioner for shifting the structures a few feet away on the V.M. road in case of any unforeseen difficulty. The provisions of Section 92 of the Mumbai Municipal Corporation Act would not apply to the case in hand, firstly because the property is not transferred by sale or lease but is allotted to the respondent nos. 4 and 5 on payment of ground rent, which according to the Corporation, the respondent nos. 4 and 5 are paying regularly and secondly because this is a case of rehabilitation and relocation of the 'eligible structures' of the respondent nos. 4 and 5, governed by the policy of the Corporation for rehabilitation of the project affected. We find that though a grievance was made about the allotment of the land to the respondent nos. 4 and 5 in the year 1995-1996 by filing writ petition no. 121/1996, the said writ petition was dismissed, thereby upholding the order of allotment. We find on a reading of Development Control Regulation nos 11(2), 11(3) and 52(iv) & (xiii) that permission could be granted for restaurants, eating houses, cafeterias, ice cream parlours, milk parlours etc. in a residential zone with a shop line. Admittedly, the respondent nos. 4 and 5 are not conducting their business on the upper floors in a building. On a reading of Regulation nos. 51 and 52 of the

Development Control Regulations for Greater Mumbai, 1991, it appears that permission could be granted for medicine shops, restaurants, eating houses, cafeterias etc. in a residential zone with a shop line. It is no body's case that the total area permitted to be used by the respondent nos. 4 and 5 for the medical shop and eating house is more than 200 Sq. Mtrs., which is the permissible maximum as per Development Control Regulation nos. 52(iv) and (xiii). We find from a reading of Development Control Regulations 11(2) and 11(3) that if a site is reserved for a particular zone, it would be permissible to use the same for the purpose for which it is shown to be reserved. The land falls in R-2 zone. If that is so, Development Control Regulation 52 would apply to the case in hand and it cannot be said in view of Development Control Regulations 52(iv) and (xiii) that permission could not have been granted to the respondent nos. 4 and 5 to construct the shops for a eating house or a pharmacy. We do not find that any apparent illegality is committed by the Corporation in allotting the sites to the respondent nos. 4 and 5. There is apparently no violation of the provisions of the Mumbai Municipal Corporation Act, the Development Control Regulations and the Maharashtra Regional and Town Planning Act. There is no doubt that the state action cannot be arbitrary and irrational and the grant of largess, licences, lease, quotas, jobs and other benefits must satisfy the dual test of reasonableness and it should be in public interest. It is no doubt true that the allotment of the land, grant of permissions and licenses must be founded on sound, transparent and well defined policy. The policy of allotting the land on the basis of the applications made by individuals, organizations or institutions

dehors an invitation or advertisement by the State or its agency/instrumentality would be treated as arbitrary, discriminatory and violative of the provisions of Article 14 of the Constitution of India in the normal circumstances. In the present case, however we find that the allotment of the land to the respondent nos. 4 and 5 is strictly under the policy of the Corporation for rehabilitation of persons that are affected by the projects like the road widening project in this case. The judgments reported in **2011 (5) SCC 29** and **1980 (4) SCC 1**, where the allotment of the land was made without the issuance of tender or advertisement, therefore, cannot be made applicable to the case in hand. In the judgment reported in **1974 (2) SCC 506**, the land was earmarked for the construction of a Kalyana mantap-cum-lecture hall and the license was granted for the construction of the same, however, the said land and the construction made thereon was permitted to be used for the exhibition of cinematographic films for public entertainment. In the facts of the said case, it was held that the resolutions passed by the Municipality has no legal foundation and they could not be sustained merely because some money might have been spent for the construction of the building for the exhibition of the cinemas. In the Judgment reported in **2008 (4) Mh. L.J. 370**, though this Court had held that where arbitrariness in State action is exposed, the delay per se, is not so material, the Court had recorded a finding that in the said case there was no such inordinate delay. In the said case a contract had been awarded on the basis of private negotiations without issuance of a tender. In the judgment reported in **1991 (4) SCC 54**, the

land was earmarked in the development plan for public park and play ground and without floating any tender, the land was allotted by the Hon'ble Chief Minister of Karnataka to the private respondent for the hospital. In the judgment reported in **1999 (6) SCC 464**, the land was earmarked in the development plan for a park and the same was handed over to the builder in violation of the provisions of the Town Planning Act for an underground shopping complex. Also, in the judgment reported in **2012(3) BCR 565**, the lease of the land was granted for a period of 30 years in utter violation of the provisions of Section 70 of the City of the Nagpur Corporation Act. In the peculiar set of facts in the said case it was held by the Hon'ble Supreme Court that the Government cannot transfer the property or give jobs or enter into contracts only to favour certain individuals. In the judgment reported in **2011(2) BCR 569**, the land was earmarked for the play ground but the same was utilized for a school of the trust that was not the owner of the land. It was held by this Court that if the land was earmarked for a particular purpose it could have been developed by the Corporation itself or by the owner thereof and if that was not possible the same could have been given to third parties for development only by inviting tenders. In the unreported judgment of this Court, the builder had made the construction beyond the 43rd floor without any sanction or permission from the Corporation authorities and hence this Court had directed for the demolition of the floors above the 43rd floor and the part of the building that was in excess, if the same was not regularized, as there was no sanction to construct the same.

The facts involved in the unreported judgment and in the present case are distinguishable. In the instant case, it is not disputed that the structures of the respondent nos. 4 and 5 on V.M. road were found to 'eligible'. Hence, as per the policy of the Corporation they were permitted to erect the structures in the compound of the Cooper hospital as the said land belongs to the Corporation. In the circumstances of the case, none of the judgments relied on by the learned counsel for the petitioner would apply. Though some allegations are levelled against the respondent-Corporation in respect of malafides and corruption, they are very general in nature and do not specifically point out in what manner the Corporation officers had indulged in corruption. No officer of the Corporation is joined in the personal capacity as a respondent though the allegations of malafides and corruption are levelled against the Corporation. We are therefore, not inclined to accept the submission made on behalf of the petitioner that the respondent-Corporation had indulged in corruption while allotting the sites to the respondent nos. 4 and 5 for the eating house and medical store in the years 1995-1996 and 2009.

Since we do not find any merit in the submissions made on behalf of the petitioner, the petition is liable to be dismissed. Hence, we dismiss the same with no order as to costs.

(Riyaz I. Chagla J)

(Smt. Vasanti A Naik, J)