IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9401 OF 2016

1. M/s. Pushpak Healthcare Services Pvt. Ltd.
A company registered under the Companies
Act, 1956, having Registered Office at
Akruti Trade Centre, Road No.7,
Marol, MIDC, Andheri (East),
Mumbai 400 093

2. Dr. Bipin Doshi,
Director of M/s. Pushpak Healthcare
Services Pvt. Ltd., Adult,
Indian Inhabitant, res. At 102,
Abhilasha Apartment,
Plot No.2, above ICICI Bank,
Punjabi lane, Borivali (West),
Mumbai 400 092 .. Petitioners

v/s.

1. State of Maharashtra,
through Ministry of Urban Development,
Mantralaya,
Mumbai.

2. City And Industrial Development
Corporation of Maharashtra Ltd.,
(popularly known as "CIDCO")
having registered office at
Nirmal, 2nd Floor,
Nariman Point,
Mumbai 400021 ..Respondents

Mr. Girish Godbole, Mr, Prakash Shinde and Mr. Rohan Agrawal i/b. MDP & Partners for the Petitioners.
Mrs. M.P. Thakur, AGP for the Respondent no.1-State.
Mr. B.B.Sharma for the Respondent No.2.

CORAM : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.
DATED : FEBRUARY 24, 2018.

JUDGMENT (PER ANUJA PRABHUDESSAI, J.):

1. With consent of parties, matter is taken for final hearing at the stage of admission.

2. This petition is filed under Article 226 of the Constitution of India, 1950 to quash and set aside the letters dated 16th April, 2010 and 3rd January, 2014 issued by the respondent no.2 CIDCO and further to issue direction to the respondent no.2 CIDCO to execute and register the modified agreement without payment of any additional premium whatsoever.

3. The facts giving rise to this petition in brief are as under:-

In the year 2005, the respondent no.2-CIDCO which is the new

Town Planning Authority had invited bids for lease of Health User + plots (Private Nursing Home, Polyclinic, Diagnostic Centers etc + Residential Quarters) at Kharghar and Kalamboli, Navi Mumbai. In response to the said scheme, Dr. Pramod Bhor had tendered his offer for acquiring Plot No.75, Sector 21 at Kharghar. Said Dr. Bhor was found eligible and hence the respondent no.2 accepted the offer and issued allotment letter dated 10th August, 2006.

3. By letter dated 1st January, 2007, Dr. Pramod Bhor requested the respondent no.2 to transfer the allotment in the name of the petitioner no.1 company of which he and one Dinesh Pasoria were the share holders. The respondent no. 2, by letter dated 10th January, 2007, accepted the request of Dr. Pramod Bhor to transfer the allotment in the name of the petitioner no.1, subject to payment of administration charges of Rs.10,000/-. Dr. Pramod Bhor complied with the said condition and thereupon the respondent no.2 issued a corrigendum dated 11th January, 2007, confirming the transfer of the allotment in the name of the petitioner no.1. On 15th February, 2007 the petitioner no.1 and the respondent no.2 executed an agreement

to lease in respect of the said plot of land. Under the said agreement, the respondent no.2 permitted the petitioner no.1 to use the said land for the purpose specified in the said agreement. The user was subject to the terms and conditions of the agreement.

4. As per the request of the petitioner no.1, the respondent no.2 increased the FSI from 1.00 to 2.00 and upon payment of additional premium extended the time of construction by four years. As a consequence thereof the petitioner no.1 forwarded a draft modified agreement and requested the respondent no.2 to execute the same. The respondent no.2 did not execute the document.

5. By letter dated 16th April, 2010 the respondent no.2 raised a grievance that Dr. Pramod Bhor and D.M. Pasoria had transferred their shares to Akruti City Limited and 9 others without prior permission and further that the two medical practitioners/directors viz. Dr. R.B.Doshi and Dr. B.C.Doshi owned only 11.80% of the total share capital, whereas the balance 88.20% share capital was owned by non-medical practitioners. The respondent no.2 therefore

directed the petitioner no.1 to regularize the issue by transferring at least 60% share capital of M/s, Pushpak Health Care Services Pvt. Ltd. to Dr.D.B.Doshi & Dr.B.C.Doshi. The Petitioner was also directed to amend the Articles of Association & Memorandum of Association to the effect that the company shall not allow its shareholders to transfer their shares without the prior written permission of CIDCO and at least 60% share of the Company shall always own by doctors.

6. The Petitioner complied with the said directions contained in letter dated 16th April, 2010. Accordingly, by letter dated 8th October, 2010, the petitioner no.1 informed the respondent no.2 that 60% of the total share capital was held by one Dr. Smita Shah and that the Articles of Association had been duly amended.

7. The respondent no.2 issued another notice dated 4th February, 2011 alleging that as per the allotment letter and agreement to lease dated 15.2.2007 all the shareholders of the petitioner no.1 company were required to be registered medical practitioners. It was alleged that the petitioner no.1 was not fulfilling the said eligibility criterion

as out of 11 shareholders only three were medical practitioners. Hence, by the said notice the respondent no.2 called upon the petitioner to show cause as to why the agreement to lease should not be terminated.

8. The petitioner thereafter made representation before the Managing Director of the respondent no.2. During the personal hearing, the respondent no.2 suggested that the entire share holding of the petitioner no.1 should be held by the medical practitioners. The petitioner agreed to the said condition and accordingly w.e.f. 7th June, 2012 the entire share capital of the petitioner no.1 was held by the medical practitioners. Despite compliance with the said conditions, the respondent no.2 did not execute the modified agreement. On the contrary, the respondent no.2 issued another notice dated 3rd January, 2014 alleging that the transfer of land from Dr. Pramod Bhor to the petitioner no. 1 Company and diversion of share pattern from medical practitioners to non medical practitioners and constant change in the share pattern was in breach of the conditions incorporated in the scheme booklet,. The petitioner was

therefore directed to apply to the Corporation within 15 days to reinstate /transfer the plot in the name of Dr. Bhor, failing which, the Corporation sought to resume the possession of the plot. These notices are under challenge in this petition filed under Article 226 of the Constitution of India.

9. One Shri Surendrasing Patil , Manager (Town Services-3) of the respondent no.2-CIDCO has filed his affidavit wherein he has justified issuance of the said notices and the action proposed to be taken by the respondent no.2. The case of the respondent no.2 as set out in the said affidavit is that the petitioner has committed various breaches in respect of the terms and conditions of the original allotment letter dated 10th August, 2006 as well as agreement to lease dated 15th February, 2007. It is further stated that as per condition no.24 of the tender, the construction of the hospital was to be completed within a period of five years from the date of the execution of the lease agreement. The respondent no.2 has alleged that the petitioners have not complied with the said condition.

10. It is further alleged that the petitioner no.1, in utter violation of the terms and conditions of the allotment letter and agreement to lease changed the holding of the company and the Directors without its permission, and such a change defeats the very object of the allotment of the subject plot. It is stated that the then Marketing Manager of the respondent no.2 had accepted the request of Dr. Pramod Bhor and transferred the land in the name of the petitioner no.1 without consulting his seniors and superior officers. The respondent no.2 has stated that the said transfer was without any authority. It is further stated that when the said act of transfer came to the notice of the higher authorities of CIDCO, the matter was placed before the Board of Directors and it was resolved that the original allottee shall be called upon to reinstate his name in the said plot.

11. Mr. Godbole, the learned Counsel for the petitioner contends that the transfer of the land in the name of the petitioner no.1 was permitted by the respondent no.2. He further contends that the petitioner no.1 has also complied with the directions given by the

respondent no.2 vide letters dated 16th April, 2010 and 4th February, 2011 and accordingly transferred 100% share holding in the petitioner no.1 company to medical practitioners. He therefore contends that the petitioner no.1 has not committed any breach of terms and conditions of the agreement to lease. He contends that the allotted plot of land is being used for the purpose for which it was allotted. As regards delay in constructions, he contends that having enhanced the FSI from 1.00 to 2.00 the respondent no.2 was required to execute modified agreement. He has submitted that the petitioner no.1 could not commence the construction since the respondent no.2 had not taken any initiative to execute the required document. He has submitted that the petitioners have always adhered to and complied with the terms and conditions of the agreement and that the impugned notice dated 4th February, 2011 and 3rd January, 2014 are totally arbitrary and illegal, and are required to be quashed and set aside.

12. Per contra, Mr. Sharma, the learned Counsel for the respondent no.2 contends that in terms of clause 4 of the scheme booklet, only

doctors are eligible to acquire the plot under the scheme. He has submitted that Dr. Pramod Bhor was allotted the said plot as he met the eligibility criteria. He has submitted that issuance of corrigendum to the allotment letter and transfer of land in favour of the petitioner no.1 was in contravention of the eligibility criteria and the same is null and void.

13. The learned counsel for the respondent no.2 further contends that the shares of the petitioner no.1 company have been transferred time and again without prior permission of the respondent no.2 and without payment of the transfer charges. He has further submitted that in terms of the agreement to lease, the construction was to be completed within a period of five years. This condition has also not been complied with. He, therefore contends that constant breach of terms and conditions justify the impugned action.

14. We have perused the record and considered the submissions advanced by Shri Godbole, the learned Counsel for the petitioner, and Shri Sharma, the learned Counsel for the respondent.

15. Before we deal with the rival contentions it is relevant to take note of some of the admitted facts. The respondent no.2-CIDCO, being the new Town Development Authority for Navi Mumbai, under Section 118 r/w. of the MRTP Act has power and authority to dispose of the developed plots on lease within the notified area of Navi Mumbai. In exercise of powers under Section 118 r/w. 149 of MRTP Act, the respondent no.2 CIDCO has framed Rules and Regulations (New Bombay Disposal of Land Regulations, 1970) for disposal of the land with previous approval of the Government. In exercise of powers vested in it, in the year 2005, the respondent no.2-CIDCO invited bids for lease of health user + plots (Private Nursing Home, Polyclinic, Diagnostic Centres etc + Residential Quarters) at Kharghar and Kalamboli, Navi Mumbai. As per clause (4) of the general terms and conditions of the scheme booklet the registered Ayurvedic/ homeopathic practitioner was eligible to apply under the scheme. In response to the said scheme, Dr. Pramod Tukaram Bhor tendered his offer for acquiring plot no.75, Sector 21 at Kharghar. The respondent no.2 held Dr. Bhor to be eligible and accepted the offer and allotted the plot vide letter dated 10th August, 2006.

16. The allotment letter, which is at Exhibit B, indicates that Dr.Pramod Bhor was allotted Plot No. 75, Sector 21 at Kharghar, Navi Mumbai, admeasuring 3053 sq. meters for total lease premium of Rs.3,05,29,669/-. The permissible FSI was 1.00 and the plot was to be used for health user. The said allotment letter indicates that Dr. Bhor had paid Rs.27,03,400/- towards lease premium and the balance premium of Rs.2,78,26,569/- was due and payable in two installments, as per the schedule of payment stated in the letter of allotment. In addition, Dr. Pramod Bhor was also required to pay Misc. Charges of Rs.1,60,011,693/-.

17. It is pertinent to note that by letter dated 1st January, 2007, Dr. Pramod Bhor had informed the respondent no.2 that he was the Director of M/s. Pushpak Health Care Services Pvt. Ltd., holding 60% share capital and expressed his desire to transfer the said plot in the name of M/s. Pushpak Health Services. On receipt of said letter, the respondent no.2 by letter dated 10th January, 2007 informed Dr. Pramod Bhor that his request for transfer of the said plot in the name

of M/s. Pushpak Health Care was considered by the Management subject to payment of administration charges of Rs.10,000/- within 10 days.

18. Dr. Pramod Bhor paid the total lease premium of Rs.3,05,29,969/- as well as Rs.10,000/- towards the administrative charges. The respondent no.2 therefore issued a corrigendum dated 11th January, 2007 and transferred the allotment in the name of the petitioner no.1 M/s. Pushpak Health Care Services Pvt. Ltd and accordingly the petitioner no.1 and the respondent no.2 executed an agreement to lease dated 15th February, 2007.

19. The respondent no.2 has alleged that the then Marketing Manager, who had accepted the request of Dr. Pramod Bhor to transfer the plot in the name of the petitioner no.1 without consulting the superior authority. It is pertinent to note that the scheme booklet which contains terms and conditions of the scheme was signed by the Marketing Manager (II). The offers under the scheme were invited by the Marketing Manager (II) and the tender

offers were to be addressed to the Marketing Manager (II). Accordingly, Dr. Bhor had forwarded the offer to the Marketing Manager. Having accepted his offer, Dr. Bhor was issued a letter of allotment. The said letter of allotment as well as the annexure to the allotment letter, which contains the terms and conditions of the allotment, was signed by the Marketing Manager of the respondent no.2 Corporation.

20. It is not the case of the respondent no.2 that the Marketing Manager (II) was not empowered to call for the tender, accept the tender offer, issue letter of allotment and or corrigendum and that the initial allotment was null and void. On the contrary, the facts narrated above indicate that the Marketing Manager(II) had ostensible authority to act on behalf of the respondent no.2.

21. It is also to be noted that after conceding the request of Dr. Pramod Bhor to transfer the plot in favour of the petitioner no.1, the respondent no.2 accepted the total lease premium as well as the administrative charges from Dr. Pramod Bhor and thereafter issued

corrigendum to the allotment letter. Furthermore, pursuant to the said corrigendum, the respondent no.2 through its Assistant Marketing Officer had signed the agreement to lease in favour of the petitioner no.1. It is not the case of the respondent no.2 that the said Assistant Marketing Officer was not authorized or empowered to execute the lease on its behalf or that the agreement to lease was tainted by fraud and misrepresentation as to render it wholly ineffective, null and void.

22. Furthermore, by letter dated 30th October 2007 the petitioner no.1 had requested for grant of additional FSI. The respondent no.2, by letter dated 5th March 2008 enhanced the FSI from 1.00 to 2.00 subject to payment of additional premium. The petitioner paid the additional premium of Rs. 1,27,08,719, which was confirmed by the respondent no.2 vide receipt dated 28th March 2008. In our view, having allowed the application for transfer of allotment, increase of FSI and having accepted the premium/ additional premium, administrative and other miscellaneous charges, the respondent no.2 cannot now contend that the transfer of allotment was invalid or

without authority.

23. The Respondent has also sought cancellation of the allotment on the ground of illegal transfer. It is alleged that the transfer of share capital and change of directors of the petitioner no.1 company was without prior permission of the respondent no.2. In the show cause notice as well as letter of resumption it is urged that such transfer and change is in contravention of clause 20 of Transfer of assignment rights.

24. In this context it would be advantageous to refer to Clause 20 which deals with transfer or assignment of rights and reads thus:

> " The intending lessee can transfer or assign his rights, interests or benefits which may accrue to him from the Agreement with the prior written permission of the Corporation and on payment of such transfer charges as may be prescribed by the Corporation from time to time. Such permission can however be granted only after the agreeed lease premium and any other amount required has been paid in full and further provided that the

> transferee shall fulfill the eligibility condition stipulated in clause no.4 of the scheme, Transfer of Health User plots to developers is prohibited. However, it can be transferred to doctors only. Transfer of Health User Plots to Developer is prohibited. However, it can be transferred to doctors only."

25. A plain reading of this clause clearly indicates that there is no total embargo on transfer of the rights accrued from the agreement. The only requirement was that such transfer could be effected only in favour of doctors after obtaining prior written permission of the CIDCO and upon payment of full premium, administrative and transfer charges.

26. In the present case, as stated earlier, the plot was initially allotted to Dr. Pramod Bhor and with the permission of the respondent no. 2 it was transferred to the petitioner no. 1 Company, with Dr. Bhor and Dr. Dinesh Pasoria as its directors. It is not in dispute that subsequent to the execution of the agreement to lease, there was transfer of share capital and change of Directors of the petitioner no.1- Company. The certificate dated 25th March, 2010

issued by Vecario Associates, Chartered Accountant of the petitioner no.1 indicates that Dr. Bhor and D.M.Pasoria had transferred their shares to Akruti City Ltd., and 9 Ors., out of which only two shareholders were medical practitioners. The share capital of these two directors/medical practitioners- Dr. R.B.Doshi and Dr.B.C.Doshi was only 11.80% and the balance 80.20% share capital was of non-medical practitioners. It is not in dispute that the transfer of share capital and change of Directors was without permission of the respondent no.2.

27. The learned Counsel for the petitioner contends that change in shareholding or the change of Directors does not amount to change of lease rights. In support of this contention he has relied upon the decision of the Apex Court in ***Balco Employees Union (Regd) vs. Union of India & Ors. (2202) 2 SCC 333***. We are unable to accept this contention. It is true that the agreement of lease is in favour of the petitioner no.1, which is a legal entity. Nevertheless, the general principle of identity of the company being distinct from shareholders and Directors is subject to the doctrine of lifting of the corporate veil.

Reference in this regard can be made to the decision of the Apex Court in ***State of Rajasthan & Ors. vs. Gotan Lime Stones Kanji Udyog Pvt. Ltd. & Anr. (2016) 4SCC 469***. The question before the Apex Court was whether transfer of entire shareholding and change of directors amounted to transfer of mining lease. While applying the doctrine of lifting the corporate veil the Apex court held thus:

> "23. *In the present case there are two transactions. Viewed separately, there may be nothing wrong with either or both but if real nature of transaction is seen, the illegality is patent. In first transaction of transfer of lease from the firm to the company, with the permission of the competent authority, only disclosure made while seeking permission for transfer is of transforming partnerhsip business into a private limited company with same partners as Directors without there being any financial consideration for the transfer and without there being any third party. There is perhaps nothing wrong in such transfer itself. In the second transaction the entire shareholding is transferred for share price and control of mining lease is acquired by the holding company without any apparent price for lease. Technically lease rights are not sold, only shares are sold. No permission for transfer*

of leasehold may be required. Let us now see the combined effect and the real substance of the two transactions. The partnership firm holding leasehold rights has successfully transferred the said rights to a third party for consideration in the form of share price which is nothing but price for sale of mining lease which is not allowed and for which no permission has been granted. Thus, if these facts are disclosed to the competent authority, permission for transfer of mining rights for financial consideration could not be allowed. Mining rights belong to the State and not to the lessee, and the lessee has no right to profiteer by trading such rights. In fact the lessee has also not claimed such a right. The lessee can either operate the mine or surrender or transfer , only with the permission of the authority as legally required. In the present case, the lessee has achieved indirectly what could not be achieved directly by concealing the real nature of the transaction. Is it legally permissible, is the question…

27. It is thus clear that the doctrine of lifting the veil can be invoked if the public interest so requires or if there is allegation of violation of law by using the device of a corporate entity. In the present case, the corporate entity *has been used to conceal the real transaction of transfer of mining lease to a third party for consideration without statutory consent by terming it as two separate transactions – the first of transforming a partnership into a company and the second of sale of entire shareholding to another company. The real transaction is sale of mining lease which is not legally permitted. Thus, the doctrine of lifting the veil has to be applied to give effect to law which is sought to be circumvented.*"

28. In the instant case, the plot is owned by the respondent no.2 and was allotted to Dr. Bhor. He got the allotment transferred in the name of the petitioner no.1 company by asserting that he was a 60% shareholder of the company. As per the requirement of the scheme the plot can be transferred only to doctors with prior permission of the respondent no.2 and on payment of transfer charges. In the present case, subsequent to execution of the agreement to lease, there had been 100% transfer of share capital and change of directors of the petitioner no.1 company. Only two of these directors were doctors having total share capital of 11.80%. It is thus evident that though the company remained the same, under the guise of such

change, new directors were put in control of the plot by circumventing the requirements of the scheme. In the light of above, the decision in Balco (supra), which was also considered in Gotan Lime__ (supra), has no application.

29. The question which therefore arises is whether such breach justifies termination of the agreement to lease. In this regard, a perusal of letter dated 16th April, 2010 reveals that the respondent no.2 was well aware of this transfer. Admitted position is that the respondent no.2 had neither terminated the agreement to lease nor sought to resume the plot on the ground of the breach of condition. On the contrary, the respondent no.2 had directed the petitioner no.1 to regularize the issue by: (1) transferring at least 60% share capital to two medical practitioners, and (2) amending the Article of Association and Memorandum of a Association to the effect that the company would not allow its share holders to transfer their share without prior permission of CIDCO, with further condition that at least 60% share of the company would always be owned by the doctors.

30. The petitioner no.1 had complied with these two conditions imposed by the respondent no.2. This fact was intimated to the respondent no.2 by letter dated 8th October, 2010 and a copy of the certificate of Chartered Accountant to that effect was also forwarded. It is seen that even after the said two conditions were complied with, the respondent no.2 issued another notice dated 4th February, 2011 whereby the petitioner no.1 was informed that out of 11 share holders, only three share holders were doctors and as such the company was not fulfilling the eligibility criteria. The petitioner has claimed that pursuant to the said notice, it had made representation before the Managing Director of the Respondent No.2 and that the petitioner no.1 was given personal hearing on 16th August, 2011. In the said hearing, it was suggested by the respondent no.2 that the entire share holding of the petitioner no.1 should be held by medical practitioners. There is no denial of these facts in the affidavit-in-reply filed by Surendra Patil. It is also to be noted that acting upon the suggestion of the Managing Director of the respondent no.2, the petitioner no.1 has made further changes and resultantly, since 7th

June, 2012 the entire share capital of the petitioners is held by medical practitioners. A certificate to that effect issued by the Chartered Accountants M.K.Gohel & Associates was forwarded to the respondent no.2 under the covering letter dated 11.6.2012.

31. The records thus indicate that though the shareholding and the directors were changed without permission of the respondent no.2, the respondent no.2, had sought to regularize the breach` subject to the condition that 60% of share price should be held by medical practitioners and that there should be no further transfer of shares without prior permission of the respondent no.2. In compliance with the condition, the petitioner transferred 60% of the total share capital to a doctor. Subsequent transfer of 100% share capital to the doctors was effected as per the suggestion of the Managing Director of the respondent no.2, in order to meet the eligibility criterion. As sated earlier, there is no total restriction on transfer. The change in share capital, conditions imposed by the respondent no.2 for regularizing the transfer were not illegal or contrary to statutory provisions. In view of these facts, the respondent no.2 is precluded

and estopped from canceling the allotment on the ground of illegal transfer. As a result, action of the respondent cannot be sustained.

32. The respondent no.2 has also tried to justify cancellation of allotment on the ground that the petitioner has not completed the construction within the period stipulated in the agreement. This ground was not raised in the show cause notice or order dated 4th February 2011,which sought cancellation of allotment and resumption of land. Furthermore, the records reveal that subsequent to increase in FSI and extension of time for construction, the respondent no.2 had failed to execute the required documents. Hence, the petitioner cannot be held responsible for not adhering to the time schedule. Consequently, the allotment cannot be canceled on such ground.

33. It is to be noted that, there are no allegation of change of user of the plot. The grievance about transfer of share capital in favour of non medical practitioners has been redressed and rectified by the petitioner. The learned counsel for the petitioner has stated that the

petitioner is ready and willing to pay Rs. 10,76,160/, quantified as transfer charges. Shri Sagar S. Shah, the Authorized signatory of the petitioner no.1 company has also filed an affidavit-cum-undertaking on behalf of the petitioners. The relevant paras of the affidavit read as under :-

> 1. I, say that pursuant to the directions of this Honourable Court on 24th February, 2018, I am filing the present affidavit cum undertaking.
>
> 2. I say that the petitioner no.1 shall use the land forming subject matter of the present petition viz. Land admeasuring 3056.45 square meters, Plot No. 75, Sector 21, Kharghar, Navi Mumbai, only for medical purposes and accommodation of medical practitioners.
>
> 3. I further undertake that the shares in the Petitioner No.1 Company shall not be voluntarily transferred to non-medical practitioners. The shareholders of the Petitioner no.1 Company may create a lien and/or pledge on the shares of the petitioner no.1 company held by them for the purposes of funding and financing the activities of the petitioner no.1 company. A transfer of shares in case of any default shall not be bound by this undertaking. Further , any transfer of shares held by medical practitioner to legal descendants who may

not be medical practitioner shall also be permitted.

4. I further undertake that the sum of Rs.10,76,160/- being transfer charges for effectuating change in shareholding pattern in the Petitioner No.1 Company , during the period 2007 to 2017, shall be paid to the Respondent No.2 within a period of two weeks hereof."

The statements made and undertakings given are accepted. In view of the undertaking and also considering the fact that the FSI is increased from 1.00 to 2.00, and that the period for construction has already lapsed, the parties are required to enter into a modified agreement and extend the period of construction.

34. Considering the above facts as well as the undertaking given by and on behalf of the petitioners, we allow the writ petition. The impugned notice dated 4th February, 2011 and letter dated 3rd January, 2014 are quashed and set aside.

35. The respondent no.2 is directed to execute and register modified agreement, without payment of additional premium within the period of four weeks from the date of uploading of this order.

36. The Respondent No.2 shall suitably extend the time for construction.

37. There shall be no order as to costs.

(ANUJA PRABHUDESSAI, J.) **(RANJIT MORE, J.)**