

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL W.P. NO. 9212 OF 2014

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1. Bhumiraj Builders Pvt. Ltd.
A company incorporated under the
Companies Act, 1956, and having its
Registered Office at D-2,
Big Splash, Vashi, Navi Mumbai,
2. Bhupendra Murji Shah,
adult Indian Inhabitant a shareholder
and director of Iraisaaa Developers Pvt.
Ltd.
Residing at F-51, Grain Merchants'
Co.Op. .. Petitioners
Housing Society Ltd. Sector 17, Vashi,
Navi Mumbai-400 075

Vs.

1. City and Industrial Development
Corporation of Maharashtra Ltd. Through
its Managing Director
a statutory corporation having its
registered office at
Nirmal Building, 2nd floor, Nariman Point,
Mumbai-400 021
And
its Head Office at CIDCO Bhavan, CBD
Belapur, Navi Mumbai - 400614
2. Chief Land and Survey Officer,
City and Industrial Development
Corporation of Maharashtra Ltd.
having his office at CIDCO Bhavan,
CBD Belapur, Navi Mumbai

3. State of Maharashtra through
the Secretary Urban Development
Department,
Mantralaya, Mumbai
4. Govindnarayan Puranmal Mundra
Adult, Indian Inhabitant residing at
16/62, Sahyadri Oswal Park
Pokharan Road No.2, Thane
5. Ghanshyam Puranmal Mundra
Since deceased through LRs
a) Sushma Ghanshyam Mundra
b) Anup Ghanshyam Mundra
c) Utpal Ghanshyam Mundra
All Adults, residing at Maheshwari
Bhavan, 1st floor, Behind Union Bank of
India, Thane
6. Ramniklal Puranmal Mundra
adult, residing at Maheshwari
Bhavan, 1st floor, Behind Union Bank of
India, Thane
7. Brijmohan Puranmal Mundra
adult, residing at 6, Mark CHS, GB Road,
Charai, Thane
8. Chandrakant Puranmal Mundra
Adult, Indian Inhabitant, residing at
9/401, Flower Valley Complex
Panchpakhadi, Thane
9. Nandlal Puranmal Mundra
Since deceased through legal heirs
(a) Mahesh Nandlal Mundra
(b) Manoj Nandlal Mundra
All adults, indian inhabitants,
Residing at Laxmi Niwas, Dhobi Ali,
Thane

10. Shri.Jugalkishore Hanumanbux Mundra
11. Balkishen Hanumanbux Mundra
12. Kamalkishore Hanumanbux Mundra:
All adults, Indian inhabitants
residing at Mundra House, Parekh
Medical Stores, Jambhli Naka,
Station Road, Thane
13. Nirmala Rajendra Muchhal
Deceased, legal heirs
(i) Rajendra Governdhandas Mucchal
(ii) Gaurav Rajendra Mucchal
(iii) Sourabh Rajendra Mucchal
Residing at 21, Soubhaghya, 1/1
New Plasia, Indore, Madhya Pradesh
14. Tanuja Dilipkumar Jaju,
Adult, Indian Inhabitant,
residing at 325 Jaju Bhawan,
Budhwar Kapase Galli,
Malegaon, Nasik
15. Mohinibai Lakshminiwas Baldva
Sangameshwar Colony, Near State
Bank of Hyderabad, Gulbarga, Karnataka
16. Navi Mumbai Municipal Corporation
having its head office at Plot No.1
Near Kille Gaothan Palmbeach Junction,
CBD Belapur, Navi Mumbai 400614 .. Respondents

WITH
CIVIL APPLICATION ST.NO. 21141 OF 2018
IN
W.P.NO. 9212 OF 2014

Bhumiraj Builders Pvt. Ltd. .. Applicant

IN THE MATTER BETWEEN:

Iraisaa Developers Pvt. Ltd. And Anr. .. Petitioners

Vs.

City and Industrial Development
Corporation of Maharashtra Ltd. And .. Respondents
others

WITH
CIVIL APPLICATION ST.NO. 21163 OF 2018
IN
W.P.NO. 9212 OF 2014

Ramesh Shamji Patil .. Applicant

IN THE MATTER BETWEEN:

Iraisaa Developers Pvt. Ltd. And Anr. .. Petitioners

Vs.

City and Industrial Development
Corporation of Maharashtra Ltd. And .. Respondents
others

WITH
CIVIL APPLICATION ST.NO. 21168 OF 2018
IN
W.P.NO. 9212 OF 2014

Suresh Shankar Koli .. Applicant

IN THE MATTER BETWEEN:

Iraisaa Developers Pvt. Ltd. And Anr. .. Petitioners

Vs.

City and Industrial Development
Corporation of Maharashtra Ltd. And .. Respondents
others

WITH
CIVIL APPLICATION ST.NO. 22560 OF 2018

**IN
W.P.NO. 9212 OF 2014**

Prakash Gaurya Mundkar .. Applicant

IN THE MATTER BETWEEN:

Iraisaa Developers Pvt. Ltd. And Anr. .. Petitioners

Vs.

City and Industrial Development
Corporation of Maharashtra Ltd. And .. Respondents
others

**WITH
CIVIL APPLICATION ST.NO. 22568 OF 2018
IN
W.P.NO. 9212 OF 2014**

Mahesh Suresh Mundkar .. Applicant

IN THE MATTER BETWEEN:

Iraisaa Developers Pvt. Ltd. And Anr. .. Petitioners

Vs.

City and Industrial Development
Corporation of Maharashtra Ltd. And .. Respondents
others

**WITH
CIVIL APPLICATION ST.NO. 22837 OF 2018
IN
W.P.NO. 9212 OF 2014**

Bhalchandra Baban Mundkar .. Applicant

IN THE MATTER BETWEEN:

Iraisaa Developers Pvt. Ltd. And Anr. .. Petitioners

Vs.

City and Industrial Development
Corporation of Maharashtra Ltd. And .. Respondents
others

WITH
CIVIL APPLICATION ST.NO. 23239 OF 2018
IN
W.P.NO. 9212 OF 2014

Pundlik Hira Bhagat .. Applicant

IN THE MATTER BETWEEN:

1. Iraisaa Developers Pvt. Ltd. And Anr. .. Petitioners

Vs.

City and Industrial Development
Corporation of Maharashtra Ltd. And .. Respondents
others

....

Mr. P.K.Dhakephalkar Senior Counsel along with Farid Karachiwala, Sneh Mehta and Mahek Chheda i/b Wadia Ghandy and Co. for Petitioners in W.P. No. 9212 of 2014 and for Applicant in CA St. No. 21141 of 2018.

Mr. Akhilesh Dubey along with V. Mishra i/b A. Dhongade for Applicant in CA St No. 22168 of 2018 & 21163 of 2018

Mr. Atul Rajadhyaksha Senior Counsel along with Nikhil Jaykar, Bhushan Banker and U.Kumar for Applicant in CA St.No. 22837 of 2018

Mr. Y.S. Bhate i/b Kirankumar Phakade for Applicant in CA St.No. 22560 of 2018

Mr. Y.S. Bhate i/b Pravinkumar More for Applicant in CA St.No. 22568 of 2018

Mr. Y.S. Bhate i/b Mangesh Shirsat for Applicant in CA St. No.

23239 of 2018

Mr. A.B. Vagyani GP along with Mr. A.I. Patel AGP for the State

Mr. G.S. Hegde for Respondent – CIDCO i.e. Respondent Nos. 1 to 3

Mr. Abhijeet Marathe for Respondent Nos. 4 & 10 to 12

....

**CORAM : NARESH H. PATIL ACTING C.J.
AND G.S.KULKARNI, J.**

**RESERVED ON : 03/09/2018
PRONOUNCED ON : 04/10/2018**

JUDGMENT : [PER NARESH H.PATIL, ACTING C.J.]

1. Rule. Heard finally by consent of the parties.
2. This petition was filed in the year 2014 with following substantive prayer:

“(a) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate order or direction calling for the records and proceedings pertaining to the Impugned Notices dated 9th September, 2014 (Exhibit “V”) and 23rd September, 2014 (Exhibit “X”) and after scrutiny thereof, the Impugned Notices dated 9th September, 2014 and 23rd September, 2014 be

quashed and set aside;"

3. The petition came to be amended with leave of the Court and the added prayers read as under:

"(a) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate order or direction calling for the records and proceedings pertaining to the Impugned Notices dated 9th September, 2014 (Exhibit "V") and 23rd September, 2014 (Exhibit "X") and impugned letters both dated 7.7.2018 (Exh. LL and Exh. MM) and after scrutiny thereof, the Impugned Notices dated 9th September, 2014 and 23rd September, 2014 and impugned letters both dated 7.7.2018 (Exh. LL and Exh. MM) be quashed and set aside;

(b) that pending the hearing and final disposal of this Writ Petition, this Hon'ble Court be pleased to stay the said Impugned Notices dated 9th September, 2014 (Exh."V" hereto) and 23rd September, 2014 (Exh."X") and impugned letters both dated 7.7.2018 (Exh. LL and Exh. MM) and further restrain the Respondent Nos. 1 and 2 and Respondent Nos. 3 and 16 by themselves and / or their servants and agents from taking any further steps in pursuance of the

Impugned Notices dated 9th September, 2014 and 23rd September, 2014 and impugned letters both dated 7.7.2018 (Exh. LL and Exh. MM);”

4. The petitioners' case is that Respondent Nos. 4 to 15 were the owners of land admeasuring around 60 Hectars 83 Ares situated at village Waghivli, Taluka Panvel, District Raigad. In the year 1970, these lands were notified by the State of Maharashtra, Respondent No.3 herein, under Section 4 of the Land Acquisition Act, 1894. These lands were required for Navi Mumbai Project for a public purpose. As no further steps were taken by Respondent No.3 within the stipulated period as required under the provisions of Land Acquisition Act, 1894 for acquiring the lands, the acquisition stood lapsed. It is contended that Respondent No.3 notified these lands again under Section 4 of the Land Acquisition Act, 1894 in the year 1999 for the same project. A declaration was issued under Section 6 of the Land Acquisition Act, 1894. The Special Land Acquisition Officer was appointed who commenced further proceedings of acquisition.

5. The Special Land Acquisition Officer (for short

“SLAO”) declared an Award dated 23rd December, 2002. Compensation to the tune of Rs.64,35,096/- was declared to be payable to Respondent Nos. 4 to 15 being the owners of the land. The compensation amount was accepted by the said Respondents on 5th September, 2005 under the Award dated 23rd December, 2002.

6. A large tracts of land from around 95 villages situated in Thane and Raigad Districts was acquired by the Respondent No.3 for the said purpose. The lands were acquired and vested in Respondent No.1 - City and Industrial Development Corporation of Maharashtra Ltd. (for short “CIDCO”) and Respondent No. 3 - State of Maharashtra.

7. Sometime in the month of March, 1990, the Respondent No.3 State of Maharashtra, took a decision to allot 12.5% area of the lands acquired, to the land owners whose lands were acquired for Navi Mumbai Project. This scheme was known and referred to as “the 12.5% scheme”. A Government Resolution dated 6th March, 1990 was issued by Respondent No.3 setting out various terms and conditions for the allotment

of the land under the 12.5% scheme. The terms and conditions are narrated by the Petitioners in the petition.

8. The said Scheme was clarified from time to time. A Government Resolutions dated 24th August, 1994, 15th December 1997 and 28th September, 1998 were accordingly issued. Modified terms are also quoted in clause 7(g) of the petition.

9. It is therefore, contended that Respondent Nos. 4 to 15 by their letter dated 15th October, 2004 requested Respondent No.1 - CIDCO to allot them land under the 12.5% scheme in the area of Nerul or Vashi or Sanpada. The said request was not accepted by Respondent No.1 - CIDCO. By communication dated 4th April, 2007 Respondent Nos. 4 to 15 again requested Respondent No.1 - CIDCO for allotment of land. After certain correspondence between the Revenue authorities concerned, the Respondent No.1 - CIDCO allotted land in favour of Respondent Nos. 4 to 15 by issuing allotment letter dated 22nd January, 2007. By letters dated 22nd January, 2007 and 28th May, 2008, the Respondent No.1 - CIDCO

executed three separate Agreements to Lease i.e. 16th June, 2008, 5th September, 2008 and 27th April, 2009 in favour of Respondent Nos. 4 to 15. These deeds were registered with the Sub-Registrar of Assurances at Thane. It is stated that the possession of these lands was also handed over to Respondent Nos. 4 to 15.

10. The Petitioner executed Memorandum of Understanding dated 30th June, 2004, 15th July, 2004 and 22nd April, 2005 with Respondent Nos. 4 to 15 for assignment of benefits, if any, granted to Respondent Nos. 4 to 15 under the 12.5% Scheme. Three separate registered tripartite Agreements were executed between Respondent No.1, Respondent Nos. 4 to 15 and the Petitioners. It is stated that all the right, title and interest of the Respondent Nos. 4 to 15 were vested in the Petitioners as new licensees of Respondent No.1 - CIDCO. The possession of the said land was also handed over to the Petitioners.

11. It is the contention of the Petitioners that at the time of allotment of lands, the lands were hilly and uneven and

without any infrastructural facilities. Respondent No.1 - CIDCO was aware that no other person was willing to accept the land under the 12.5% scheme. The said lands were located in the residential zone as per the Development Plan of Navi Mumbai Municipal Corporation (for short "NMMC").

12. It is the Petitioners' contention that the Petitioners had taken a lot of efforts to level the said lands and they incurred a huge expenditure for making it fit for further future development. They claimed to have spent Rs.25 crores till the date of filing of the petition on the development of the said land carried out by them. On the future projects, the Petitioners had received advances to the tune of Rs.6 crores from various other persons who were intending to purchase the lands in their project.

13. While the development work was in progress, the NMMC addressed a Stop Work notice dated 29th January, 2010 directing the Petitioners not to proceed with the Development work until further orders. An enquiry was proposed to be carried out by Respondent No.3 - State of Maharashtra through

Principal Secretary (Urban Development Department) in respect of the allotment of the land by Respondent No.1- CIDCO, it is the Petitioners' contention that the State initiated this step as a question was raised in the Legislative Council by a Member of the Council.

14. On 3rd August, 2010 the Petitioner received notice from Respondent No.2 - Chief Land and Survey Officer, CIDCO stating therein that the allotment of the lands in favour of Respondent Nos. 4 to 15 and subsequently, executed tripartite agreements with the Petitioners were required to be cancelled for the reasons stated therein. Oral hearing was fixed by Respondent No.1 - CIDCO at its Office at CBD Belapur on 6th September, 2010. Next hearing took place on 25th September, 2010. The Petitioners filed two written submissions. Final hearing of the matter took place on 12th October, 2010 , 15th October, 2010 and 15th November, 2010. On 12th October, 2010 the Respondent Nos. 5 to 14 completed their arguments. The matter was adjourned to 26th October, 2010 and 15th November, 2010 on which day, the balance arguments were completed. As order was passed by Respondent No.1 - CIDCO

on 29th November, 2010 cancelling the allotment of land by an Agreement to lease in respect of the said land in favour of Respondent Nos. 5 to 14. The tripartite agreement executed between the parties was also cancelled and the Respondent No.2 was directed to take further possession of the said land within 15 days.

15. In the meanwhile, on 26th November, 2010, State Level Environmental Impact Assessment Authority approved the development to “Bhumiraj Hills” a project proposed by the Petitioners.

16. Being aggrieved by order dated 29th November, 2010 passed by Respondent No.1 - CIDCO, the Petitioners filed Writ Petition No. 10163 of 2010 before this Court. By an order dated 14th March, 2012, the High Court set aside the directions contained in the Communication dated 14th July, 2010 addressed to Respondent No.1 by Respondent No.3 cancelling the allotment in favour of Respondent Nos. 4 to 15. The High Court further set aside the order dated 29th November, 2010 by Respondent No.1 - CIDCO. The said order dated 14th March,

2012 reads as under:

“ P.C.

Rule. Returnable forthwith. Heard finally by consent of parties.

2. By this petition the Petitioners challenge the order passed by the CIDCO dated 29.11.2010 canceling the allotment of Plot No.3 and Plot No.4 in Sector 30-31, CBD-Belapur, Navi Mumbai under 12.5% scheme in favour of predecessor-in-title of the Petitioners. That order was issued pursuant to show cause notice issued by CIDCO dated 3.8.2010. Perusal of that show cause notice shows that that show cause notice was issued pursuant to directions issued by the State Government dated 14.7.2010 to the CIDCO to cancel the allotment. It appears from that letter that the State Government, pursuant to some complaint received, held an inquiry into validity of the allotment and it came to the conclusion that the allotment is not valid and therefore, a direction was issued to the CIDCO to cancel the allotment. The direction issued by the State Government is referred to in the show cause notice issued to the Petitioners. The Petitioners in their reply had raised a specific contention that as the show cause notice has been issued by the CIDCO pursuant to the direction issued by the State Government for cancellation of the allotment and as the direction of the State Government to cancel the allotment of the plots is

binding on CIDCO, issuance of show cause notice and the inquiry which was being held pursuant to show cause notice is merely a farce. In the final order made by the CIDCO this contention has not been even referred to. There is no dispute before us that the direction issued by the State Government to CIDCO in relation to cancellation of allotment under the aforesaid scheme will be binding on CIDCO. In our opinion, if the direction of the State Government is binding on the CIDCO, CIDCO has no option but to follow that direction. So far as the decision of the State Government contained in the letter dated 14th July, 2010 is concerned, it is an admitted position that that decision is *ex parte* and has been taken without giving an opportunity of being heard to the persons who are likely to be adversely affected by that decision i.e. the Petitioners, and therefore, in our opinion, it is clear that the decision of the State Government dated 14th July, 2010 of issuing direction to the CIDCO to cancel the allotment made in favour of the predecessor-in-title of the Petitioners being violative of principles of natural justice has to be set aside.

3. In our opinion, therefore, in the facts and circumstances of the case following order would meet the ends of justice:

ORDER

(i) The direction contained in the

communication dated 14th July, 2010 addressed to CIDCO by the State Government to cancel the allotment made in favour of predecessor-in-title of the Petitioners is set aside.

(ii) The order made by the CIDCO pursuant to the direction issued by the State Government, which is impugned in the petition, is also set aside. However, the State Government and the CIDCO will be at liberty to take such steps in relation to allotment of the land in favour of the predecessor-in-title of the Petitioners as may be available to them in law in accordance with the procedure laid down by law.

(iii) The learned Addl. G.P. appearing for the State Government stated before us that the State Government will take a decision about the course of action that the State Government desires to follow in this regard as expeditiously as possible, in any case within a period of three months from today. Statement accepted.

(iv) The learned counsel appearing for the Petitioners, without prejudice to the rights and contentions of the Petitioners, stated that the Petitioners will not transfer, alienate, create third party right or carry on any development on the suit land for a period of three months from today. It is clarified that the CIDCO if it is so advised, shall be at liberty to take appropriate action in accordance with

law.

(v) The Petitioners have also challenged the stop work notice that has been issued by the Corporation to the Petitioners. It appears that the stop work notice was issued in view of the cancellation of the allotment. We have set aside the cancellation of the allotment of this order. Therefore, the Petitioners shall be at liberty to approach the Corporation for suitable orders in this regard.

(vi) In view of the order passed in Writ Petition, Civil Application No. 280 of 2012 does not survive for consideration. The Applicants, however, shall be free to adopt such remedy as may be available to them in law. All contentions kept open.”

17. Thereafter, the Respondent No.3 issued a show cause notice dated 18th May, 2012 calling upon the Respondent Nos. 4 to 15 to explain on the issues. The show cause notice rests on the said Communication in respect of the 12.5% scheme. Pursuant to the said show cause notice, parties appeared and submitted their detailed written submissions. Hearing was concluded on 9th October, 2012 before the Respondent No.3. As no order was passed by Respondent No.3, the Petitioners by its communication dated 7th December, 2012 and 15th June, 2013 requested the Respondent No.3 to pass an order at the

earliest.

18. After a period of 1½ years, the Respondent No.3 by its letter dated 3rd March, 2014 addressed to Respondent No.1 - CIDCO and NMMC arrived at a conclusion that no interference at the Government level was called for in the present case. Respondent No.3 directed the Respondent No.1 - CIDCO and NMMC to take necessary steps in accordance with the High Court order dated 14th March, 2012.

19. In compliance of the said letter, NMMC by its letter dated 20th March, 2014 vacated the stay granted earlier and granted permission to construct the building.

20. The Petitioners again received a fresh notice of hearing dated 9th September, 2014 from Respondent No.1 - CIDCO, in the shape of show cause notice on certain points which are mentioned in the petition. By another notice dated 23rd September, 2014, Respondent No.1 fixed final hearing on 8th October, 2014. The Petitioners, therefore, submitted that in view of the concluded view of the Respondent No.3, the further

notices issued by Respondent No.1 - CIDCO were uncalled for.

21. This petition was circulated for orders on 8th October, 2014 on which date, the Division Bench of this Court passed the following order:

“P.C.

Not on board. Upon mentioning, in view of urgency shown, taken on board.

2 Though privately served, none appeared for Respondent No.1.

3 Issue notice to Respondent No.1, returnable on 19.11.2014. Private notice is also permitted by all possible modes.

4 The statement is made that no notice is required for Respondents 4 to 15 as they are supporting the Petitioner. They are also served privately.

5 In the meantime, no coercive steps be taken, based upon impugned notices dated 9.9.2014 and 23.9.2014 till next date of hearing.”

22. The ad-interim order was continued from time to time.

23. In the meanwhile, the Respondent No. 16 - NMMC issued a letter dated 7.7.2018 to Respondent No.1 - CIDCO asking them to stop work and to stay all the permissions for construction issued to the Petitioners. The said letter was issued pursuant to the letter dated 7.7.2018 addressed by Respondent No.3 - State to Respondent No.1 - CIDCO and NMMC. The Petitioners amended the petition by raising challenge to the Communication dated 7.7.2018 addressed by Respondent No.3 to Respondent No.1 - CIDCO and Respondent No.16 - NMMC. The petition was accordingly amended and prayer clause stood amended on the liberty granted by the Court.

24. The learned Senior counsel appearing for the Petitioners submitted that in view of the ad-interim order passed by the Division Bench which was operating since the year 2014, it was not expected on the part of all the Respondents to have issued a fresh order of stop-work raising the same issue which was *subjudice* before this Court. The orders issued by the State and consequent compliance of the Respondent No.1 and NMMC is contrary to the orders passed by

this Court and they are in the teeth of the same. As a matter of propriety, as the issue was pending before this Court as *subjudice*, the Respondents ought to have sought leave of this Court first before resorting to issuance of fresh notice. The learned Senior counsel further submitted that the Petitioners on the basis of tripartite Agreements have already taken steps and received advances and commercial proposals for development of the project. They have asked for loan of Rs.200 crores for the project. The construction has already begun and now at this stage, a question is again raised in the Legislative Council, due to which probably the State authorities were compelled to issue certain directions which have adversely affected the interest of the Petitioners. The learned Senior counsel submitted that the issue is already concluded and in view of the interim order passed by this Court, the impugned communication which was issued, deserves to be quashed and set aside. As regards the impugned Communication issued by Respondent No.1 - CIDCO dated 23rd September, 2014 which was the cause for filing of the petition, the Counsel submitted that inquiries were conducted at the State Level and by Communication dated 3rd March, 2014, the

Respondent No.3 had opined that no interference was called for in respect of the subject issue of allotment of land under the 12.5% Scheme. The same cannot be reopened again and again. The counsel submitted that certain intervention applications are filed by the persons who claimed to be tenants of the original owners of the land i.e. Respondent Nos. 4 to 15 . They are free to resort to appropriate alternate remedies as permissible in law. Their intervention in these proceedings is uncalled for. Their approaching at a belated stage, negates their contention of any hearing to be accorded to them by this Court.

25. On behalf of Respondent No.3 – State an affidavit in reply has been filed by Samadhan Vasantrao Khatkale, Under Secretary, Urban Development Department, Mantralaya, Mumbai who stated in paragraphs 15 and 16 as under:

“15. However, in the year 2018 Legislative Assembly Session at Nagpur it is noticed that CIDCO has not acted upon the directions of the State Government dated 23.05.2018 and also did not brought to the notice the updated status of the

matter to the Hon'ble High Court. Meanwhile Hon. Leader of Opposition, Legislative Council, considering pendency of matter in Hon'ble High Court, informed to the State Government vide letter dated 06.07.2018 that the Government should cancel allotment and all other permissions granted and should not take any decision affecting the interest of the farmers from whom the lands are acquired. Hence, the State Government vide letter dated 07.07.2018 informed to the CIDCO and Navi Mumbai Municipal Corporation that the directions given by letter dated 23.5.2018 are stayed. The authorities are also directed by the said letter to stay the allotment orders, building permissions and other approvals granted in this behalf, and to bring all the facts to the notice of Hon'ble High Court. A copy of the said letter dated 07.07.2018 is hereto annexed and marked as Annexure-I.

16. In view of above stated facts, it is to be seen that CIDCO is the appropriate authority to allot the 12.5% plots for the PAP's having regard to the award declared dated 23.12.2002, policy for respective nodes and the guidelines issued by State Government dated 06.03.1990 & 28.10.1994 and clarification issued on 15.12.1997 in that behalf."

26. An affidavit-in-reply has been filed on behalf of

Respondent No.1 - CIDCO and Respondent No.2 through Shri. Ajinkya N. Padwal, Chief Land and Survey Officer (Thane). The deponent has stated in paragraphs 12, 13, 15 and 16 as under:

“12. The present Respondent also passed an order dated 29.11.2010 (Exh.”J” to the Petition), whereby the present allotments were held as arbitrary and void and accordingly the allotments were cancelled. Being aggrieved by the said Order, the Petitioners filed a Writ Petition bearing No. 10163 of 2010 before this Hon'ble Court. This Hon'ble Court by an order dated 14.03.2002 (Exh.”M” to the Petition) set aside the directions contained in the letter of the State Government dated 14.07.2010 and the impugned order of CIDCO dated 29.11.2010. This Hon'ble Court however, granted liberty to CIDCO and the State Government to take appropriate steps due with respect to the present allotments, in accordance with due procedure laid down by law. In the aforementioned Writ Petition, the tenants of the land had sought to move an application for intervention and also filed a Writ Petition bearing No. 413 of 2011 against the Answering Respondent which was withdrawn vide an order dated 14.03.2012. Hereto annexed and marked as Annexure-”1” is a copy of the order dated 14.03.2012.

13. Subsequently, the State Government issued

a fresh Show-Cause Notice dated 18.05.2012 and heard the Petitioners and the present Respondent. On 03.03.2014, the State Government passed an order with respect to the present allotments (Exh."S" to the Petition). The State Government in its communication addressed to the Managing Director of CIDCO concluded that interference at the level of the Government is not required for the present allotments. However, the State Government directed CIDCO to take necessary action in pursuance to the order of this Hon'ble Court dated 14.03.2012.

15. I say that during the pendency of the present Petition, the present Respondent issued supplementary Show-Cause Notices dated 29.01.2016. However, after deliberations, the present Respondent decided to accept the decision of the Linkage Committee and withdraw the Show-Cause Notices dated 09.09.2014 and 23.09.2014 and the Supplementary Show-Cause Notices dated 29.01.2016. The decision was communicated to the Petitioners vide a letter dated 08.06.2016. Hereto annexed and marked as Annexure "2" is a copy of the letter dated 08.06.2016 addressed by the present Respondent to the Petitioners.

16. Subsequently, vide letter dated 22.12.2017, the State Government informed the Answering

Respondent that the State Government has decided to stay the implementation and operation of the letter dated 08.06.2016 of the present Respondent whereby the Show-Cause Notices and Supplementary Show Cause Notices were withdrawn. Hereto annexed and marked as Annexure "3" is a copy of the letter dated 22.12.2017 addressed by the State Government to the present Respondent".

27. The learned counsel appearing for the State submitted that the Respondent No.1 - CIDCO is the appropriate authority to allot the plots of land under the 12.5% scheme.

28. In the year 2018, during the session of the Legislative Assembly at Nagpur, it was mentioned during a debate that, CIDCO did not act on the direction of the State Government dated 23rd May, 2018, neither brought to the notice of the High Court updated status of the matter. In the meanwhile, the leader of Opposition in Legislative Council, considering the pendency of the matter in the High Court, informed the State Government vide letter dated 6th July, 2018 that the Government should cancel allotment and all other permissions granted and should not take any decision affecting the interest

of the farmers from whom the lands were acquired. Therefore, the State vide letter dated 7th July, 2018 informed the CIDCO and NMMC as mentioned in the letter dated 23rd May, 2018.

29. On behalf of Respondent Nos. 1 and 2, affidavit-in-reply has been filed on 3rd March, 2014. The State Government passed an order with respect to the present allotment. The State Government in its communication addressed to Managing Director of CIDCO stated that interference at the level of the Government is not required for the present allotment. However, the State directed CIDCO to take necessary action in pursuant to the order of the High Court dated 14th March, 2012 in W.P. No. 413 of 2012.

30. The learned Counsel appearing for the CIDCO therefore, submitted that they have acted on the communication of the State Government and accordingly had initiated proceedings and the Show-Cause Notices were accordingly issued.

31. We have perused the record placed before us. We

find that on 14th July, 2010 a communication was made by the Respondent No.3 - State to CIDCO to cancel the allotment and accordingly, by communication dated 29th November, 2010, the Respondent No.1 - CIDCO cancelled the said allotment. Writ Petition No. 10163 of 2010 was filed challenging the said communication of the CIDCO dated 29th November, 2010. By order dated 14th March, 2012, the High Court set aside this communication. But while setting aside the same, the High Court clarified that the CIDCO if they so advised, was at liberty to take appropriate action in accordance with law.

32. In second round, on 18th May, 2012, the Respondent No.3 - State issued further Show-Cause Notices. Based on the same, on 23rd September, 2014, Respondent No.1 - CIDCO issued fresh Show-Cause Notice and the present Writ Petition i.e. W.P. No. 9212 of 2014 came to be filed wherein this Court directed the Respondents not to take any coercive steps pending hearing of the Writ Petition. Meanwhile, the Respondent No.3 - State by communication dated 3rd March, 2014 opined that no interference is called for in respect of the subject of allotment of land under the 12.5% scheme. Based

on the said opinion of the State, NMMC by communication dated 20th March, 2014 vacated the stay granted to the construction. On 8th June, 2016 the Respondent No.1 - CIDCO passed order withdrawing the Show-Cause notices dated 9th September, 2014 and 29th January, 2016.

33. Surprisingly, the State issued communication dated 22nd December, 2017 addressed by Respondent No.1 - CIDCO staying the communication made by Respondent No.1 - CIDCO dated 8th June, 2016. On 23rd May, 2018, the State issued further communication indicating that the stay granted to the communication made on 8th June, 2016 by communication dated 22nd December, 2017, stands cancelled. But the things do not rest here. Again in the fresh round, the State by communication dated 7th July, 2018 based on the communication made on 6th July, 2018 by the Leader of Opposition, Legislative Assembly, further took steps and directed suspension of all the permissions granted so far by the respective authorities and further directed that this be brought to the notice of the High Court. By way of subsequent amendment, Petitioners have brought on record the

communication and orders passed by the State.

34. We find peculiar turn of events in this case wherein though the said lands were acquired in the year 1999 and Award was passed in the year 2002, the scheme under the 12.5% was implemented in 2007, the Respondent-authorities have still kept the issue alive for the last more than 10 years. Even at this stage, the issue concerning the acquisition, the tripartite agreements executed between the parties, the allotment of the land under the 12.5% scheme has not been given quietus. It seems that Respondents do not intend to conclude the issues finally. The development projects need not be held up and the beneficiaries of allotment, be allowed to enjoy benefits of such allotment. Tripartite agreements are executed between the parties, financial transactions have taken place, projects are pronounced, substantial financial implications are involved. At this stage, at the behest of the State Government or the CIDCO or sometimes at the Corporation level, show cause after show cause notices are issued and hearing after hearing is undertaken and that too, while the issue is *subjudice* and pending for consideration of

this Court for the reasons best known to the authorities concerned.

35. In the facts of this case, we find that such issue needs to be finally concluded once the State Government after hearing and after going through the record, had clearly opined that no interference was warranted. CIDCO and the Corporation had thereafter after considering the issues, had allowed the Petitioners to go ahead with their project but again at the State Level on a query raised in the Assembly, further communications were made first in the year 2014 and subsequently, in the year 2016 and now in the year 2018.

36. One of the important communication which goes to the root of the matter is the communication dated 3rd March, 2014 (Exh. "S" to the Petition), which shows that issue was concluded at the State Level in respect of allotment of land under the 12.5% scheme by CIDCO. No interference at the State Level was warranted. Another important communication was issued by CIDCO dated 9th September, 2014 and 8th June, 2016 wherein the Respondent No.2 had also opined and

withdrawn the notices issued on 9th September, 2014 and 29th January, 2016 by CIDCO. We have perused all these communications and after considering the submissions, we are of the view that the issue needs to be finally concluded. We do not find any necessity in reopening the issues now by the State or by CIDCO authorities.

37. On behalf of the certain persons, intervention applications have been filed, who claimed to be the tenants of the owners of the land. On behalf of interveners, learned Senior Counsel Mr. Atul Rajadhyaksha and learned counsel Mr. Bhate submitted that keeping them in dark, the lands were acquired and the benefit of allotment of land under the 12.5% scheme was given. Being tenants of the land the benefit of the acquisition process i.e. allotment of land under the 12.5% scheme, has been denied to them, therefore, further development and construction of any project undertaken by the Petitioners needs to be stayed. We are informed that interveners who claimed to be tenants, have not resorted to any proceedings so far since last several years to establish their claims as tenants and for getting them benefits as prayed

for in their intervention applications. The counsel appearing for the Petitioners submitted that if the applicants have any alternate remedy, they may resort to such, as permissible in law but at this stage in the present proceedings, interveners cannot be permitted to raise any issues. We find substance in the submission made by the learned counsel appearing for the Petitioners.

38. We observe that the interveners if they are so advised, are at liberty to take recourse to appropriate alternate remedy as permissible in law in respect of their claims that they were tenants of the suit lands and therefore, interested and should be beneficiaries in respect of whatever benefits of the owners of the land i.e. Respondent Nos. 4 to 15 or their successors-in-title like the Petitioners got.

39. For the reasons stated above, we quash and set aside impugned notices i.e. (a) dated 9th September, 2014 (Exh."V"), (b) dated 23rd September, 2014 (Exh."X") and (c) impugned letters both letters dated 7.7.2018 (Exh.LL & MM).

40. In view of disposal of the Writ Petition, Civil Application St. No. 21141 of 2018 does not survive and is accordingly disposed of.

41. In view of disposal of the Writ Petition, intervention applications i.e. Civil Application St. Nos. 22837 of 2018, 22560 of 2018, 21163 of 2018, 21168 of 2018, 22568 of 2018 and 23239 of 2018 are disposed of with liberty to the interveners to adopt appropriate legal remedy if they are so advised.

42. Rule is made absolute in above terms.

G.S.KULKARNI, J.

ACTING CHIEF JUSTICE

43. After pronouncement of judgment, the learned counsel appearing for the applicants – interveners prays for stay of the judgment for a period of two weeks. The learned counsel for the petitioners opposed the same. In the facts, the prayer for stay is rejected.

G.S.KULKARNI, J.

ACTING CHIEF JUSTICE