

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.1016 OF 2013
WITH
CRIMINAL APPLICATION NO.1267 OF 2013**

Mrs.Hema Sureshkumar Kalra .. Appellant
V/s.
M/s.Kuber Builders & Ors. .. Respondents

**WITH
CRIMINAL APPEAL NO.826 OF 2014**

Premkumar Srinivas Nazre & Ors. .. Appellants
V/s.
State of Maharashtra & Ors. .. Respondents

**WITH
CRIMINAL WRIT PETITION NO.2402 OF 2013**

City & Industrial Development
Corporation of Maharashtra Ltd.
(CIDCO) .. Petitioner
Vs.
The State of Maharashtra & Ors. .. Respondents

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Mr.Vineet Naik, Senior Counsel a/w. Ms.Kausar Banatwala I/b.
Mr.Tushar Goradia, Advocate for the Appellant No.Appeal 1016 of
2013.

Mr.G.S. Hegde a/w. Ms.P.M. Bhansali and Mr.C.M. Lokesh,
Advocate for Respondent - CIDCO in all Appeals and for
Petitioner in W.P. 2402 of 2013.

Mr.Kirit J. Hakani a/w. Mr.Niyati Hakani, Advocate for the
Intervener in Cr. Appeal 1016 of 2013.

Ms.S.V. Sonawane, APP for Respondent – State.

Mr.Jahangir Minoo Khajotia, Advocate for the Appellant in Criminal Appeal No.826 of 2014.

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**CORAM : S.C. DHARMADHIKARI AND
PRAKASH D. NAIK, JJ.**

DATED : APRIL 6, 2018.

P.C. :

By two Appeals and one Writ Petition, the order of the Special Judge, presiding over the Court styled as “A Special Court”, under the Maharashtra Protection of Interest of Depositors (Financial Establishment) Act, 1999, (*for short*, “MPID”), is challenged.

2 The appellant before us claims that, the 5th Respondent - City Industrial Development Corporation Limited, (*for short*, “CIDCO”), styled as “A Special Planning Authority”, under Section 113-A of the Maharashtra Regional and Town Planning Act, 1966, invited bids for disposal of an immovable property. One Suresh Kalra placed his bid. It was stated to be accepted. A ‘Letter of Allotment’ was issued, allotting the plot on certain terms and conditions. It is claimed that, the premium was paid to the CIDCO.

3 The first respondent to this Appeal is an legal entity, styled as “M/s.Kuber Builders”. It claims that, this premium was paid by it on behalf of Mr.Suresh Karla. Mr.Suresh Kalra has since expired. The reliance is placed on the ‘Agreement to Lease’ dated 14th January, 1998, pursuant to which possession of the plot was handed over to Mr.Kalra.

4 On 16th August, 2000, MPID Case No.7 of 2000 was filed against M/s.Kuber Builders, 2nd respondent and its Directors and Partners, in which attachment was levied on the assets and properties of respondent nos. 1 and 2. First respondent claimed right and interest in the said plot. The allegation was that, there was some arrangement with said Kalra in respect of this plot. That is how this property was attached. The property continued to be under attachment, but an application was made at Exhibit – 61, seeking to lift the attachment.

5 That application was allowed on 24th January, 2013 and from the record, it appears that while allowing that application to raise the attachment, the Special Judge has passed the following order:

"1 The application is allowed subject to the applicant producing proper certificate to inherit the rights and properties of her deceased husband.

2 Attachment of the Plot bearing No.C-61 Sector 11, Kharghar, admeasuring 1427 sq. meters is hereby lifted.

3 In exercise of my powers u/s.8 of MPID Act, I direct the CIDCO to deposit the entire amount of Rs.1,42,00,000/- received by it from the accused towards the leasehold rights of this plot in Court within 45 days from today.

4 On oral request of advocate Mr.Vijay Agarwal, the attachment of malafide transfer of amount received by CIDCO on behalf of Suresh Kalra will be stayed if the applicant unconditionally deposits in Court Rs.1,42,00,000/- alongwith interest @ 19% from the date of depositing the amount till today.

5 On oral request of Ld. SPP, this order is stayed for a period of 1 month.

6 In case CIDCO is required to deposit the amount, it will be entitled to take appropriate action against Suresh Kalra in respect of the said plot.

7 On oral request of advocate Mr.Chogle, Adv. Mr.Agarwal, Advocate Mr.Bhansali, are permitted to take ordinary copy of this order as per para 556 and 560 of Civil Manual subject to keeping the record in safe custody. Copies be provided to SPP and competent authority free of charge."

6 The only material aspect of this order is that, the attachment has been raised.

7 Thereafter, the present appellant sought extension of time to deposit the amount. In other words, on 13th February, 2013, by an order passed below Exhibit - 69, a time-limit was prescribed to deposit that amount.

8 From the record it appears that, an application at Exhibit - 70 was made by the present appellant, seeking to tender the amount, but, by the impugned order, that application is dismissed.

9 Hence, this Appeal was filed.

9A CIDCO has filed Writ Petition No.2402 of 2013 on 17th April, 2013 and the prayer in paragraph 19(a) of the Memo of this Petition reads as under:

“(a) That by issuance of writ of certiorari or any other appropriate writ, direction of order the impugned Judgment & order dated 24.01.2013 passed by Hon'ble Special Judge Designated For MPID Act, City Civil and Sessions Court, Bombay in

Exhibit 61 of 2010 of M.P.I.D. Special Case No.7 of 2000 be quashed and set aside to the extent of the Petitioner depositing the amount with the Hon'ble Court."

9B The CIDCO in paragraphs 1 to 13 of the Writ Petition states as under:

"1 The Petitioner City and Industrial Development Corporation of Maharashtra Limited (hereinafter called 'the Corporation' or CIDCO) is a Company incorporated under the Companies Act, 1956 and is a Government Company within the meaning of Section 617 of the Act, consequent upon its share capital having been subscribed wholly and exclusively by the State Govt. and its nominees.

2 The Petitioner submits that the Government of Maharashtra, with an intent to decongest the Greater Mumbai and to upgrade its civic amenities, has decided to create a new town across the Thane Creek, and accordingly, in exercise of the powers under Sub-section 1 of Section 113 of the Maharashtra Regional & Town Planning Act 1966 (hereinafter referred to as 'MR&TP Act'), has notified the area for the New Town Navi Mumbai. The State Government, in exercise of the powers under Sub-section 3A of Section 113 of the MR&TP Act, appointed CIDCO as the "New Town Development

Authority” for Navi Mumbai. The Petitioner Corporation is thus functioning as the statutory authority of the State Government is thus functioning as the statutory authority of the State Government, for the development of the New Town Navi Mumbai. In furtherance to the same the state government has issued a notification for acquisition of the lands falling in the notified area. The State Government by following the process under Land Acquisition Act, lands were acquired by the State Government and vested in the CIDCO. The Petitioners have for a period of time planned and developed the Navi Mumbai.

3 The Petitioner submits that the Petitioner is the New Town Development Authority for Navi Mumbai in terms of sub-section 3A of Section 113 of the Maharashtra Regional & Town Planning Act 1966 (hereinafter referred to as 'the MR&TP Act'). Sequelly, the Petitioner Corporation has, under Section 118 of the MR&TP Act, the power and authority to dispose by lease land acquired under Section 113A and vested in it by the State Government alongwith its own lands for development. By virtue of Section 291 of the Companies Act 1956, this power of disposal is exercisable by its Board of Directors. To canalize and regulate such powers, the Board of Directors of Petitioner Corporation has, with the previous

approval of the State Government solicited under Section 159 of the MR&TP Act, framed the New Bombay Disposal of Land Regulations 1975, which is subsequently amended as the Navi Mumbai Disposal of Lands (Amendment) Regulations, 2008.

4 The petitioner submits that they are entrusted with the task of developing the Navi Mumbai and in this regard they are required to earmark places for residential, commercial, educational institutions, social organizations etc and also dispose the plots to private persons for effecting the said development. The disposal of the lands is made in accordance with the provisions of the New Bombay Disposal of Lands Regulations 1975 as amended in 2008. For allotment of land, the allottee is under contractual obligation to make the payment of lease premium within the stipulated time mentioned in the letter of allotment.

5 The allotments to private vendors is on the basis of the application made by them and subject to the condition of the allottee entering into an agreement to lease with the Petitioner and further thereto pay the lease premium to the Petitioner within the stipulated time period.

6 The petitioner submits that in the year 1997, the Petitioner formulated a scheme for disposal of Residential + Commercial Plots in Kharghar on 'first-

cum-first-served' basis. In response to this scheme, one Shri Suresh Karla tendered his offer for allotment of Plot No.61 in Section 11, Kharghar. The Petitioner made allotment of the said plot, admeasuring 1,427.03 sq. mt. to Shri Suresh Karla, vide allotment letter dated 14.05.1997. After payment of the agreed lease premium, the petitioner executed the agreement to lease in favour of Shri Suresh Karla and handed over the possession of the plot on 14.01.1998.

7 That Mr.Karla had applied to CIDCO vide his letter dated 14/01/1998 for transfer of the said plot in the name of M/s. Kuber builders. The Petitioner had replied to the said letter vide its letter dated 12/02/1998, however no further steps were taken by either Mr.Karla or M/s.Kuber Builder in this regard. That as per the policy of CIDCO, the plot can be transferred in the name of the purchaser, on payment of transfer charges and execution of certain documents and since the said document were not submitted by Mr.Karla and transfer charges were not paid, therefore the plot was not transferred in the name of M/s.Kuber Builders. Hereto annexed and marked as EXHIBIT A & B is the copy of the said letters dated 14/01/1998 & 12/02/1998.

8 That 17.04.2002 Petitioner received letter from the Sr. Inspector of Police, Economic Offences Wing,

Mumbai where it was informed to the Petitioner that, pursuant to the order dated 16.08.2000 the said plot is attached.

9 That vide an application dated 20.02.2008, Mr.Karla had applied for extension of construction period. The said application was replied by CIDCO vide its letter dated 06.08.2008 specifying therein that the said application for extension cannot be considered in view of various letters received from the economic offence wing and order of Hon'ble High Court in writ petition no.3661 of 2001. Hereto annexed and marked as Exhibit C & D is the copy of the said letter dated 20.02.2008 & 06.08.2008.

10 That said Mr.Suyresh Kalra died on 06.06.2009 and pursuant thereto the Court of Civil Judge SD, Thane granted the Heir ship Certificate certifying Smt.Hema Sureshkhumar Kalra as the recognized heir of Late Shri Sureshkumar Kalra for this plot on 28.12.2009. That on Smt.Hema Kalra had requested for extension of construction period on 06.08.2009. However, CIDCO could not consider such request as the plot was attached and Liquidator was already appointed by the Hon'ble Court in respect of the said plot. Hereto annexed and marked as Exhibit E is the copy of the said application of Mrs.Hema Karla.

11 The Petitioner submits that as regards the

terms and conditions of the Agreement to Lease, it was necessary for Licensee to complete the construction within the period of Four years from the date of Agreement to Lease. As per the policy of the Petitioner, extension for construction period can be granted only on payment of certain additional lease premium. The Petitioner can consider the cancellation of plot and/or granting extension as per its policy.

12 That on 26.12.2012, the Petitioner received a letter from Shri V.K. Agarwal, Advocate on behalf of Mrs.Hema Karla, informing the Petitioner that there is case pending before it under MPID Act, being MPID Case no.7 of 2000 filed against M/s.Kuber Builders, under which the said plot was attached. The Petitioner were also served with a copy of an application at Exhibit 61 in M.P.I.D. Case no.7 of 2000 filed by the widow of the said Mr.Karla in the said MPID matter. It was revealed from Special Civil Suit No.157 of 2012 - Kuber Builders Vs. Hema Karla & Ors., that the amount of Rs.1,42,84,918 which was deposited by Mr.Karla with the Petitioner towards the satisfaction of consideration of the agreement to lease, was taken by it from M/s.sKuber Builders as per some understanding amongst them. The Petitioner was informed that for its proper adjudication, the Petitioners were required to produce all the concerned papers in respect of the

said plot in the court and were further directed to file there say in the matter. The Petitioner accordingly filed their reply along with all relevant papers and pointed out there was no privity of contract was with the said Mr.Karla and they had not entered into any agreement with M/s.Kuber. The Petitioner craves leave of this Hon'ble Court to refer to and rely on the said complaint, applications and replies filed therein.

13 The Petitioner submits that the Ld.Court after perusing the concerned document disposed off the application at exhibit 61 of the said MPID case, vide its order dated 24th January, 2013 and passed various direction viz. lifting of attachment on the plot, direction to the widow of the said Mr.Karla to deposit the amount of Rs.1,42,00,000/- allegedly paid by Kuber Builders on behalf of Mr.Karla to the Petitioner alongwith interest @ 18% p.a., within 30 days of the said order, and in case of default, the Petitioners were directed to deposit the said amount within 15 days thereafter. The Respondent no.2 Mrs.Karla has thereafter twice sought clarification of the said order and further orders are passed by the Hon'ble Sessions court on 13th February 2013 and 6th March 2013. Copy of said judgments and order is annexed hereto as EXHIBIT F, G, respectively."

9C Mr.Hegde appearing for the CIDCO submits that there is no denial of the above factual and legal averments and

yet the learned Judge passed the impugned order. The order to the extent impugned is *ex-fecie* erroneous and illegal. We find merit in this contention.

10 Criminal Appeal 826 of 2014 is filed by the Investors challenging the same orders of the learned Special Judge.

11 After hearing the parties in the Appeals, we do not see any reason to entertain it.

12 It is evident from the order dated 24th January, 2013, and particularly its operative directions, that the Special Judge directed CIDCO to deposit the amount of Rs.1,42,00,000/- received by it from the accused towards the leasehold rights.

13 Thereafter, the Court says that the appellant, applicant before us, can deposit in Court a sum of Rs.1,42,00,000/- along with interest.

14 The learned Judge, while dismissing the application at Exhibit - 70 by the impugned order, has refused to extend the time.

15 What we have noted from all the orders and particularly the order under challenge is that, the MPID Court was considering a request in terms of Sub-section 3 of Section 7 of MPID Act i.e. an objection to the attachment, which objection can be raised by any person claiming interest in the property attached.

16 The MPID Court, we are sorry to say, instead of focusing its attention on the transaction, which was brought to its notice, has considered everything, which was totally irrelevant and germane to the issue. Mr.Suresh Kalra claims that an immovable property, by virtue of Section 113 of the Maharashtra Regional and Town Planning Act, and particularly Section 113-A, was made over to the Special Planning Authority for developing certain notified areas, established under Section 40 of the said Act. Once a designation of the site for new town is made, in terms of Chapter VI of the MRTP Act, then, notwithstanding anything contained in the MRTP Act or any other law for the time being in force, where any corporation or company is declared to be the 'New Town Development Authority', under Sub-section 3A of Section 113 of the MRTP Act, the State Government shall acquire lands by agreement or under the relevant Land Acquisition Law

and such acquisition is then for the purposes of handing over the land to this New Town Development Authority. Then that land will vest in the Authority so appointed for the purposes of Chapter VI of the MRTP Act, 1966.

17 Undoubtedly, CIDCO is such Authority.

18 Mr.Kalra may have approached CIDCO and requested it to allot the plot/immovable property to him, but, the Government, under the MPID Act, has mistakenly attached the immovable property, which continues to be owned and belongs to the CIDCO. We do not see how, when the allegation was that the Suresh Kalra took a loan from the Financial Establishment/Institution and then paid money to the CIDCO, the immovable property belonging to the Government could have been attached by the Government, or, in any event, when it vests in CIDCO, unmindful of the legal position emerging from the relevant Chapters of the Maharashtra Regional and Town Planning Act, 1966. Clearly the attachment of the immovable property was illegal, null and void from inception. That attachment should have been raised.

19 The attachment, in any event, was levied without any notice to the CIDCO.

20 When such was the issue and controversy, we do not see how the Special Judge, after raising the attachment, could have then issued other directions.

21 In the circumstances, we do not think that we should continue the attachment on the immovable property, belonging to the CIDCO.

22 As far as the monies stated to have been paid to the CIDCO by Mr.Kalra is concerned, it would be open for the Authorities to proceed and attach that sum. Whether that sum can be attached in law after it has already reached the coffers of CIDCO, is another question.

23 We, therefore, do not think that entertaining any Appeals against the orders under challenge, after the above legal position was brought to the notice of all concerned, serves any fruitful purpose. It is entirely for the parties before us to decide as to whether the money should come to the investigating officer

and for disbursement to the depositors. If the monies are under attachment, whether that attachment should continue or not would have to be decided independently of this controversy. Presently we are not dealing with any such issues.

24 Therefore, keeping alive the controversy and particularly, after the attachment is levied on the sum deposited and stated to be lying with CIDCO, any interest is allegedly created, in relation to the immovable property in favour of Kalra, is a matter which must be decided on its own merits and in accordance with law. Once there is no such attachment levied on the money or on the alleged interest created in favour of Mr.Kalra in respect of the immovable property, then, the Appeals are raising only academic issues. Each one of these Appeals stand disposed of.

25 Needless to clarify that, CIDCO need not bring any amount or deposit the same in the Court, much less, the sum of Rs.1,42,00,000/- received by it, allegedly, from the accused. The Civil Writ Petition filed by CIDCO succeeds accordingly.

(PRAKASH D. NAIK, J.)

(S.C. DHARMADHIKARI, J.)