

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

WRIT PETITION NO. 12674 OF 2017

1. Lambda Therapeutic Research Limited
a company incorporated under the
Companies Act, 1956 and having its
registered office at Lambda House,
38 Near Silver Oak Engineering College,
Sarkhej _ Gandhinagar Highway, Goa
Ahmedabad 382481, also having office
at 903 F Block, Ceejay House,
Dr. Annie Besant Road, Worli,
Mumbai 400 018

2. Mr. Naresh P. Khemani,
an adult, Indian Inhabitant,
Assistant General Manager (Finance
& Purchase) of Lamba Therapeutic
Research Limited, having its address at
38 Near Silver Oak Engineering College,
Sarkhej _ Gandhinagar Highway, Goa
Ahmedabad 382481, also having office
at 903 F Block, Ceejay House,
Dr. Annie Besant Road, Worli,
Mumbai 400 018

.. Petitioner

v/s.

1. City & Industrial Development Corporation
of Maharashtra Limited, a company
incorporated under the Companies Act, 1956
and having its registered office at
2nd Floor, Nariman Point,
Mumbai 400 021

2. Navi Mumbai Municipal Corporation,
a statutory Corporation having its
head office at Plot No.1,
CBD Belapur, Section 15,
Navi Mumbai 400 614.

3. State of Maharashtra
through Urban Development Department
Government of Maharashtra,
Mantralaya, Mumbai 400 032.

4. Mehak Developers Pvt. Ltd.
A company incorporated under the
Companies Act, 1956 and having its
registered office at 507, Sharda Chambers,
New Marine Lines, Mumbai 400 020

..Respondents

Mr. Vineet Naik Sr. Advocate a/w. Darshan mehta and Naresh
Chedda I/b. M/s. Dhruve Liladhar & Co. for the Petitioners.

Mr. S.N.Patil for the Respondent No.1.

Mr. Sandeep Vishnupant Marne for the Respondent No.2,

Mr. A.I.Patel-AGP for the State.

Mr. Ashwin Shere a/w. Nikita Panse I/b. M/s. Jayakar and Partners
of the Respondent No.4.

**CORAM : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.**

DATED : 29th AUGUST, 2018.

JUDGMENT (PER SMT. ANUJA PRABHUDESSAI, J. :-

1. The petitioners have challenged the legality and validity of the

impugned letter dated 20th April, 2016 whereby the respondent no.1 has directed the petitioner to pay additional lease premium amount of Rs. 14560587/- for the period till 30th March, 2007. The petitioners have also sought directions to the respondent no.1 to issue No Dues certificate in respect of Plot No.7, Sector 15, CBD Belapur, Navi Mumbai and the building standing thereon by name "Block B, Arenja Chamber II" and further direction to the respondent no.2 to issue Occupation Certificate in respect of the said building.

2. The respondent no.1 -CIDCO had allotted plot Plot No.7, Sector 15, CIDCO, Belapur, Navi Mumbai, admeasuring 3176.25 sq. meters to the respondent no.4 Company which was initially a proprietorship concern of Mr. Madhukar Arenja under the name- M/s. Mehak Developers. Upon taking possession of the plot and complying with the requirements, the respondent no.4 completed construction of "A" Wing of the Building Arenja Chambers II within the extended period. The respondent no.1-CIDCO had issued "No Dues Certificate" and the respondent no.2- NMMC had issued Occupancy Certificate in respect of the said construction. The dispute is as regards non issuance of No

Dues Certificate and Occupancy Certificate in respect of the residual area wherein the respondent no.4 has constructed “B” Wing of Arenja Chambers II.

3. The petitioners claim that they were looking for suitable premises for its business requirements and had entered into negotiations with the respondent no.4 in respect of sale of Commercial space on the ground stilt admeasuring 408 sq. mts. Carpet area and 3 upper floors of the building cumulatively admeasuring 1224 sq. mtrs carpet area of “Block B Arenja Chambers II” for consideration of 7.21 crores. The petitioners claim that relying upon the representations made by the respondent no.4 that they would not face any serious hurdles in purchase of the said building, the petitioners paid Rs.6,15,000/- to the respondent no.4 towards the purchase price.

4. The petitioners claim that the respondent no.4 had completed the said construction on 31st December, 2008 as per the conditions of the respondent no.1-CIDCO and thereafter applied to the respondent

no.2 NMMC for Occupancy Certificate in respect of the said building. One of the conditions for grant of Occupancy Certificate was submission of No Dues Certificate from the respondent no.1-CIDCO. Hence, by letter dated 11th August, 2010 the respondent no.4 requested the respondent no.1-CIDCO to grant No Dues Certificate. The respondent no.1 CIDCO did not respond to the said request, as well as to the several reminders sent by the respondent no.4. Subsequently on 1st July, 2016, by the impugned letter the Respondent No.1 CIDCO directed the respondent no.4 to pay Additional Lease Premium amounting to Rs.14,05,60,587/- for the period till 30th March, 2007 in respect of the entire plot. The respondent no.1 CIDCO informed the respondent no.4 that it would process the request for grant of No Dues Certificate only after payment of the additional lease premium. The petitioners claim that despite having paid the sale consideration and other charges, they cannot use and occupy the premises in view of arbitrary and illegal demand of the respondent no.1-CIDCO and further due to non issuance of Occupancy Certificate by the respondent no.2-NMMC. Hence this petition.

5. Ms. Pramada Bidave, has filed affidavit in reply on behalf of respondent no.1-CIDCO. It is stated that the time to complete the construction was extended upto 31st December 2005 without levy of additional lease premium. It is stated that it was made explicitly clear that in the event the construction was not completed by 31st December, 2005 the respondent no.4 would be entitled to pay additional lease premium from 6th August, 2001. The respondent no.4 had also submitted an undertaking to the Corporation about completion of construction within the stipulated time. It is alleged that the respondent no.4 had failed to complete the construction and obtain Occupancy Certificate from NMMC by 31st December, 2005. By letter dated 26th July, 2007 again request was made for additional time for completing the construction. The respondent no.1 extended the time till 31st December, 2008 without charging any additional lease premium.

6. It is stated that though the respondent no.4 had not carried out the construction from April 1997 till January, 2001 without assigning

any reasons, the respondent no.1 CIDCO had initially extended the time till 31st December 2005 and thereafter till 31st December, 2008, despite which the respondent no.4 did not complete the construction and this fact is evident from the Occupancy Certificate dated 30th March, 2007 granted by NMMC, which clearly indicates that the construction was completed only to the extent of 78%. It is alleged that since the respondent no.4 had failed to complete the construction till 31st December, 2008, they are liable to pay additional lease premium. In the light of above, the respondent no.4 was called upon to pay the additional lease premium so as to enable the respondent no.1-CIDCO to process their request for granting No Dues Certificate.

7. Shri Owais Momin, Assistant Director of Town Planning, NMMC has also filed affidavit on behalf of the respondent no.2. He has stated that the Developer had made application dated 26th December 2008 and 28th July, 2010. In respect of the building “A” part Occupancy Certificate was issued on 30th March, 2007 for built up area 3719.98 sq. mtrs. and in respect of building “B” the

Developer had completed the construction upto plinth level and the Plinth Completion Certificate was issued on 30th June, 2008 and the Developer was permitted to complete further construction. It is stated on behalf of the respondent no.2 that the Developer thereafter made application dated 26th December, 2008 and 28th July, 2010 for issuance of Occupancy Certificate in respect of the “B” Building. It is further stated that it is mandatory for the Developer to submit No Objection Certificate from CIDCO for issuance of Occupancy Certificate. It is stated that Occupancy Certificate could not be granted since the Developer had not submitted the No Dues Certificate from CIDCO.

8. Shri Vineet Naik, learned Senior Counsel for the petitioner has submitted that the respondent No.1-CIDCO had extended time to complete the construction in respect of “B” building till 31st December, 2008. He has submitted that the respondent no.4 had completed the construction of the building prior to 31st December, 2008 and this is evident from the fact that the respondent no.4 had applied to the respondent no.2 for grant of Occupancy Certificate

vide letter dated 26th December, 2008. He has drawn our attention to the various letters/ reminders addressed by the respondent no.4 to the respondent no.1-CIDCO. He submits that the respondent no.1 CIDCO did not respond to these communications/reminders and by impugned letter dated 1st July, 2016 directed the respondent no.4 to pay total additional lease premium in respect of the entire plot. He submits that the respondent no.4 had already completed construction of “A” Building within the extended period and that the respondent no.1 had already issued No Dues Certificate in respect of the said wing on 30th March, 2007.

9. The learned Sr. Counsel has submitted that the subsequent extension was in respect of the remaining portion of the plot wherein “B” Wing of the building was to be constructed. He has submitted that the construction of said “B” wing was completed before 31st December, 2008, despite which the respondent no.1 CIDCO has issued the impugned letter, without specifying the basis on which it has claimed payment of additional lease premium. He has further submitted that the impugned letter is also issued without giving any

Show Cause Notice or without hearing the parties. He claims that since the respondent no.4 had completed the construction within time, it was mandatory for the respondent no.1 to issue No Dues Certificate which was necessary for obtaining the Occupancy Certificate from the respondent no.2. He has submitted that the petitioners are in possession of the building. The respondent no.2 has been collecting property taxes from the petitioners and that they have not been able to use and occupy the said building for want of Occupancy Certificate. He says that the action of the respondent nos.1 and 2 in not granting No Dues Certificate and Occupancy Certificate is arbitrary and illegal.

10. Shri Patil, the learned Counsel for the respondent no.1 submitted that the respondent no.4 was to complete the construction by December 2005, which period was subsequently extended to December, 2008. He has submitted that the respondent no.4 had not intimated to the respondent no.1 that it had completed the construction within the extended period. He has further submitted that the request for No Due Certificate was made only in the year 2010 when in fact such construction was to be completed by

December 2008. He has further submitted that since the construction was not completed within the extended time, the petitioners are liable to pay additional lease premium.

11. Mr. Marne, the learned Counsel for the respondent no.2 has submitted that the Occupancy Certificate could not be granted in the absence of No Dues Certificate from the respondent no.1. He has submitted that since the Developer had failed to submit such Occupancy Certificate it was not possible for the respondent no.2 to issue the Occupancy Certificate.

12. We have perused the records and considered the submissions advanced by the learned Counsels for the respective parties. We are of the considered view that the demand of Respondent No.1-CIDCO for payment of addl. Lease premium as communicated by the impugned letter, is arbitrary and illegal. It is not in dispute that the respondent No.1-CIDCO had allotted the subject plot to the respondent no.4 which was initially a partnership concerned in the name and style of M/s. Mehak Developers, run by Mr. Madhukar Arenja.

13. The issue raised in the petition is about the liability of the

respondent no.4 to pay the additional lease premium in respect of the subject plot. Undisputedly, the subject plot was allotted to the respondent no.4, which was initially a proprietorship concern of Madhukar Arenja, for commercial use. Upon payment of full lease rent, the respondent no.1-CIDCO and the respondent no.4 entered into an Agreement of Lease dated 4th August, 1995 under which the respondent no.1 had agreed to lease the said plot to Respondent no.4 for a period of 60 years, Subsequently, the respondent no.4 was put in possession of the said plot. As per the terms of the agreement, the respondent no.4 was to complete the construction within four years from the date of the agreement. It is not in dispute that the respondent no.1-CIDCO had initially extended the said period by a period of two years and subsequently till 31st December, 2005.

14. The respondent no.4 constructed A Wing of the building being Arenja Chambers II by November 2005 and submitted Architect's Completion Certificate dt. 23rd December, 2005 before NMMC and requested for Occupancy Certificate. On 9th July, 2007 respondent no.1-CIDCO issued "No Dues Certificate" certifying that there were no outstanding dues payable of additional lease premium as on 31st

December, 2005. The Respondent No.1 further certified that the licensee had paid the lease rent of the subject plot. It is also not in dispute that the respondent no.2 NMMC had also issued Occupation Certificate in respect of construction area under commercial use admeasuring 3719.95 sq. mtrs (A Building of Arenja Chambers II) .

15. It is thus evident that as per the Completion Certificate submitted by the Architect, the construction of “A” Building was completed prior to 31st December 2005. The respondent no.1 had not raised any objection regarding non completion of the construction within the scheduled time or for not obtaining the occupancy Certificate prior to 31st December, 2005. On the contrary, the respondent no.1 had issued "No Due Certificate" and the respondent no.2-NMMC had issued the Occupancy Certificate in respect of the said construction.

16. It is also pertinent to note that the respondent no.4 having decided to construct additional building i.e. “Block B Arenja Chambers II” on the said plot by using the additional FSI available thereon applied to the NMMC and accordingly, vide Commencement Certificate dated 30th March, 2007 the Respondent no.2-NMMC

granted permission for consumption of additional FSI and for constructing the building thereon. By letter dated 4th July, 2007 the respondent no.4 brought to the notice of the respondent no.1-CIDCO that it had completed 80% construction on the plot and sought extension of time for construction of the residual area aggregating to 690 sq. mtrs, which was available for construction on the said plot. The respondent no.1-CIDCO acceded to this request and by letter dated 31st July, 2007 granted extension of time for completion of construction of Block B of Arenja Chambers II till 31st December, 2008 free of any additional lease premium.

17. As can be seen from the Stability Certificate issued by the consulting Engineer and the Certificate of Completion dated 24th December, 2008 submitted by the Architect, the respondent no.4 had completed the construction of Block B Arenja Chamber II within the extended period i.e. before 31st December, 2008. The respondent no.4 had thereafter vide letter dated 26th December, 2008 requested the respondent no.2-NMMC to grant the Occupancy Certificate. The respondent no.2-NMMC had neither disputed completion of construction, nor rejected the Occupancy Certificate for the said

reason, but had rejected the request for Occupancy Certificate for not submitting the requisite documents including the No Dues Certificate from the respondent no.1.

18. It is true that the respondent no.4 had applied to the respondent no.1-CIDCO for issuance of No Dues Certificate after a considerable delay. Nevertheless, the records reveal that the respondent no.4 had enclosed with the said application the acknowledged copy of the application to the NMMC as well as the Completion Certificate submitted by the Architect. The respondent no.1-CIDCO had neither disputed the genuineness of the certificate nor raised the issue of non completion of building within the stipulated time, and chose not to respond to the said letter and several reminders. It was only after a lapse of over a period of six years that the respondent no.1-CIDCO by the impugned notice demanded an additional lease premium of Rs. 14560587/-.

19. It is to be noted that the Respondent No.1-CIDCO had raised the demand by the impugned letter dated 1st July, 2016 without issuing a show cause notice and or without granting to the respondent no.4 any opportunity of being heard. The impugned

notice also does not record any reasons or justification for such demand. The respondent no.1 had thus failed to adhere to the principles of natural justice and fair play, which is violative of Article 14 of the Constitution of India. Suffice it to say that public authorities and the Government functionaries are bound to act reasonably and fairly and the action of such authorities must pass the test of reasonableness. It is also well settled that arbitrary exercise of power and denial of administrative fairness is constitutional anathema.

20. It is also to be noted that in the affidavit in reply, a vain attempt has been made to justify the action by stating that the first extension was till 31st December, 2005 and that it was extended till 31st December, 2008. The reply further states that the Occupancy Certificate dated 31st June 2007 is only to the extent of 78% of the construction and this fact itself indicates that the respondent no.4 had failed to complete the construction and obtain full Occupancy Certificate within the time limit i.e. 31st December, 2008. As stated earlier, the respondent no.4 had completed 80% of construction before 31st December, 2005 and the respondent No.1 had issued No

Dues Certificate dt. 9th January, 2007 and the respondent no.2 had also issued Occupancy Certificate in respect of the said construction. Furthermore, vide letter dated 4th July, 2007 the respondent no.4 had informed the respondent No.1 CIDCO that they had completed 80% of the construction and had sought extension of time to construct on the remaining 690 sq. mtrs of plot area. The respondent no.1-CIDCO had acceded to the request and granted extension till 31st December, 2008 without payment of additional lease premium . The impugned notice is issued without considering the letter dated 31st July, 2007 and No Dues Certificate dated 9th January, 2007.

21. The letter dt. 31st July, 2007 indicates that the respondent no.4 was liable to pay additional lease premium w.e.f. 6th August, 2001 only in case he failed to complete the construction before 31st December, 2008. The reply does not contain any allegations that the construction of residual area was not completed before 31st December, 2008. On the contrary, the completion certificate and other documents which were submitted and were admittedly received by Respondent no.2 clearly indicate that the building was

completed in time i.e. before 31st December, 2005, which fact is otherwise not seriously disputed either by Respondent No.1-CIDCO or Respondent No.2 NMMC. In the light of the above, the reasons given in the affidavit are not sustainable.

22. Undisputedly, acting upon the letter dated 31st July, 2007, the Respondent no.1 has completed the construction within stipulated time incurring a huge expense, with a legitimate expectation of getting Occupation Certificate and NO Dues Certificate in due course, without payment of additional lease premium. The decision of the Respondent No.1 to impose additional lease premium and further not to process the request for No Dues Certificate till such payment contradicts the principles of legitimate expectations.

23. For the reasons stated above, there is no manner of doubt that the respondent no.1 has violated the principles of natural justice and the action suffers from arbitrariness and unreasonableness. Hence the impugned notice has to be quashed and set aside. Under the circumstances, we pass the following order:-

(i) The impugned letter dated 1st July, 2016 (Exh. S) is quashed and set aside.

(ii) The respondent no.1 is directed to issue No Dues Certificate in respect of Plot No.7, Sector 15, CBD Belapur, Navi Mumbai and the building thereon by name Block B, Arenja Chamber II.

(iii) The respondent no.2 shall thereafter process the application for Occupation Certificate in respect of the building Block B, Arenja Chamber II, in accordance with law.

. Writ petition stand disposed of in above terms.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)

**Prasanna
Pradeep
Salgaonkar**

Digitally signed
by Prasanna
Pradeep
Salgaonkar
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2018.09.05
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