IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8389 OF 2017

Malpani Gruh Nirman Pvt. Ltd. … Petitioner
V/s.
The City and Industrial Development Corporation of Maharashtra Ltd. And ors. … Respondents

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Mr. R.D. Soni a/w. Mr. Hemant Ghadigaonkar I/b M/s. Ram and Co. for the Petitioner.
Mr. Ashutosh Kulkarni a/w. Mr. S.S. Diwan for Respondent Nos.1 and 2.
Mr. P.G. Sawant, AGP for Respondent No.4.

CORAM : AKIL KURESHI &
S.J.KATHAWALLA, JJ.
DATE : 23rd SEPTEMBER, 2019.

P.C.

1] This petition is filed for challenging the demand of the City and Industrial Development Corporation of Maharashtra Ltd. (CIDCO for short) for additional lease premium from the petitioner as a pre-condition for granting NOC for construction on certain plots belonging to the CIDCO.

2] Brief facts are as under:

A parcel of land comprising of 7 plots bearing nos. 42 to 48 in Section SSB at New Nashik admeasuring approximately

2315 sq. meters belonging to the CIDCO was allotted to one New Nashik Presidency Club Private Limited under the lease agreement dated 28.11.2001. The terms and conditions thereof provided *inter alia* that the lesseee had paid a sum of Rs.33,39,828/- by way of a premium. The lessee would submit construction plans to the Corporation within six months from the date of allotment. The construction would be commenced within one year and completed within three years as per the approved plan. The lease agreement contained a clause for resumption of the land, which reads as under:

> "To resume land
> (b) Power - (i) in case the Licensee (I) shall fail to complete the said building within the time aforesaid and in accordance with the, stipulations hereinbefore contained (time in this respect being of the essence of the contract) or (II) shall not proceed with the works with due diligence or shall fail to observe any of the stipulations on his part herein contained, to re-enter through the Managing Director upon and resume the said land and everything thereupon this Agreement shall cease and terminate and all erections and materials, plants and things upon the said land shall notwithstanding any enactment for the time being in force to the contrary belong to the Corporation without making any compensation or allowance to the Licensee for the without making any payment to the Licensee for refund or repayment of any premium paid by him/them/it but without prejudice nevertheless to all other legal rights and remedies of the Corporations against the Licensee.
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> (ii) to continue the said land in licensee's occupation on payment of such fine as may be decided

upon by the Managing Director and

(iii) to direct removal or alteration of any building or structure erected or used contrary to the conditions of the grant within the time prescribed in that behalf and on such removal of or alteration not being carried out within the time prescribed, cause the same to be carried out and recover the cost of carrying out the same from the Licensee

(iv) All building materials and plant which shall have been brought upon the said land by or for the Licensee for the purpose of erecting such building as aforesaid shall be considered as immediately attached to the said land and no part thereof other than defective or improper materials (remove for the purpose of bring replaced by proper material) shall be remove from the said land without the previous consent of the Managing Director until after the grant of the completion certificate."

3] It appears that the said lessee did not act as per the said provisions contained in the lease. No building plans were submitted. No construction commenced. Completion of construction was a far cry. In the year 2011, the original lessee desired to exit from the proposed development of the land. The said lessee presented the petitioner as a successor and sought the permission of the CIDCO to substitute the petitioner as a lessee. The tripartite agreement was executed between the petitioner, original lessee and the CIDCO on 17.11.2011. The CIDCO collected a transfer charge of Rs.6,50,000/- from the petitioner and the petitioner agreed to be substituted as original lessee in the original lease agreement on the following terms and conditions.

> "2) The New Licensees shall be substituted for the original Licensee in the said Agreement and shall have all rights, obligations, liabilities, benefits and equities according thereunder.
> 3) The Original Licensees relinquishes and releases all its rights, titles, benefits, interest, claims or demands whatsoever in the said Agreement and discharges the Corporation from all obligations or liabilities required to be performed to it by the Corporation under the "Said Agreement".
> 4) The original Licensee indemnifies and saves harmless the Corporation against any loss or damage that may be caused to the Corporation in consequences of this Agreement or the permission granted to it as aforesaid.
> 5) The stamp duty payable under this tripartite agreement shall be borned and paid by the New Licensees wholly and exclusively."

4] Even the petitioner did not apply for passing of building construction plan for a long time, after execution of the said tripartite agreement. Some time in the year 2016, the petitioner applied for NOC. The CIDCO refused to grant such clearance without the petitioner agreeing to pay the additional premium for delay in commencement and completion of the construction. The CIDCO would claim such additional charges as per its new policy dated 9.5.2002. This policy envisaged collection of additional premium from the lessee, who fails to complete the construction within six years from the date of allotment of land. Relevant portion of this resolution reads as under:

> "In New Towns _ New Aurangabad, New Nashik and New Nanded, while granting development permission and/or allowing transfer of plots leased out by CIDCO, if the lessee has not constructed building within the time period stipulated in Agreement to Lease, then for delay in construction, Additional Lease Premium is levied. As per B.R. No. 8031 dated 15.10.1999, lessees are allowed six years free time period for construction & completion of building without levying Addl. Lease Premium and, for delay beyond six years, Addl. Lease Premium is levied. The percentage of the amount of Additional Lease Premium has relation with the amount of land premium sanctioned in Agreement to Lease. For New Towns, the Board has approved from time to time the percentage of the amount of Additional Lease Premium as follows:"

5] The case of the petitioner is two folds. Firstly, according to the Counsel for the petitioner, the additional premium can be charged only on the completion of period of six years from the date of tripartite agreement dated 17.11.2011. He submitted that the Corporation is not justified in claiming the additional premium starting from 17.11.2011 itself. The second contention is that even after submission of the building plans, the CIDCO had not acted upon the same within reasonable period. The CIDCO for its own delay cannot claim the additional premium.

6] On the other hand, Counsel for the CIDCO opposed the petition contending that the petitioner under the tripartite agreement dated 17.11.2011 was merely allowed to substitute the original lessee. He cannot claim a fresh period of six years for completion of construction from the date of tripartite agreement. The authorities, therefore, correctly demanded the additional premium for the entire period.

7] The facts are not seriously in dispute. As noted, the original lessee was granted the land by the CIDCO on the condition of commencement and completion of the construction within the specified periods. As per which, the construction had to be completed in three years. As per the policy decision of the CIDCO dated 9.5.2002, the additional premium at prescribed rates would be charged in case the construction is not completed within six years. Thus after granting moratorium of three years over and about the base period of the three years envisaged in the lease agreement, the liability for paying additional premium would commence. The original lessee had exposed himself for payment of such additional premium, which was actually paid at the time he exited the project. He projected the petitioner as the successor lessee. The CIDCO accepted such position and tripartite agreement was executed between three sides on 17.11.2011. This agreement clearly envisaged that the new licensee shall be substituted for the original licensee in the original agreement and shall have all the rights, obligations, and liabilities arising thereunder. Thus, the petitioner was not a fresh lessee of the CIDCO. The petitioner merely inherited the previous lease with all the continuing liabilities and obligations. The period of six years, therefore, was correctly computed from the original date of the lease and not the date of tripartite agreement. Quite apart from this plain interpretation of the terms of the tripartite agreement, even independently thereof, we are persuaded that the stand taken by the CIDCO is a reasonable one. Accepting the stand of the petitioner would enable a lessees to avoid utilisation of the CDICO land for six years and thereafter seek transfer in favour of a new lessee by paying a small transfer charge. The original lease envisaged termination of the lease and resumption of the land by CIDCO, if any breach of the condition was noticed. Had the CIDCO exercised this option and terminated the lease of the original lessee in the year 2011, the CIDCO could have allotted the same to a new lessee at the market rate prevailing in the year 2011. Whatever appreciation in the land prices between the year 2001 and 2011 was shared by the original lessee and the petitioner. Having done so, the petitioner must submit to the original lease conditions. He cannot seek a fresh period of six years for completion of constructions from the date of tripartite agreement.

8] Under the circumstances, we do not find any merit in the challenge of the petitioner to the stand adopted by the CIDCO. The delay in passing of the plans of the petitioner were consequential to the stand taken by the CIDCO of collecting additional premium for the entire period which the petitioner resisted. When we hold that the CIDCO is justified in making such an insistence, the petitioner cannot avoid the payment of premium for the period post making the application for NOC. The petition is, therefore, dismissed.

(S. J. KATHAWALLA, J.) **(AKIL KURESHI, J.)**