

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 7104 OF 2002

Messrs Baf-Hira Builders Private
Limited a Company incorporated
under the provisions of the Companies
Act, 1956 and having its office at 1st
floor, Kamar Building, 38, Cawasji
Patel Street, Fort, Mumbai 400 001 .. Petitioner

Versus

1. The Collector of Bombay Suburban
District, Office of the Collector,
Bombay Suburban District, 10th floor,
Administrative Building, Bandra
(East) Mumbai 400 051
2. State of Maharashtra
3. Enric Anselum Mendes
4. Heaven Anselum Mendes
5. Velankani Jordan Mendes

All Christian Adult Indian Inhabitant
Residing at Kharodi Village Marve
Malad (West) Bombay 400 095
(Amendment carried out as per Court
Order dated 1.7.2004 in C.A.No.
1496/2004 in WP No. 7104/2002 .. Respondents

**WITH
WRIT PETITION NO. 2004 OF 2015**

1. Mr. Eric Anselem Mendes, Residing at village Kharodi Marve, Malad (W), Mumbai
2. Mr. Austin Gabriel Mendes, Both Christian, Adults, Heirs & legal Representatives of Late Mr. Lawrence Francis Mendes, Presently residing at Stone House, Kharodi Village, Near Fish Market, Marve Road, Malvani, Malad (West), Mumbai-400095 ... Petitioners

V/s.

1. The State of Maharashtra, Through its Additional Chief Secretary, Revenue & Forest Department, Mantralaya, Mumbai-400 032
2. The Commissioner, Konkan Division, Old Secretariate Annexe, 1st floor, Opp. Kala Ghoda, Near Elphinstone College, Fort, Mumbai-400032
3. The Collector, Mumbai Suburban District, 10th floor, Administrative Building, Opp. Chetana College, Government Servants Colony, Bandra (East), .. Respondents Mumbai-400051

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Mr. Virag Tulzapurkar, Senior Advocate a/w Mr. Vishal Kanade, Mr. Hrushi Narvekar, Mr. Vivek A. Vashi, Ms. Shaheda Madraswala and Ms. Samrudi Chothani i/b Vashi & Vashi for Petitioner in W.P. No. 7104/2002.

Mr. Prasad Dhakephalkar, Senior Advocate a/w Mr. Ajai Fernandes & Mr. S. A. K. Najam-es-sani i/by Maneksha & Sethna for Intervener-Applicant (CAW/2741/2017 in WP/2004/2015 & CAW/494/2019 in WP/7104/2002).

Mr. Ulhas T. Naik Advocate for Petitioner in W.P.No. 2004/2015.

Mr. J. S. Hegde for Intervener-Applicant (IA/1/2019 in WP/7104/2002).

Mr. Akshay Shinde for Intervener-Applicant (CAW/135/2019).

Mr. M.M.Pabale AGP for the State.

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**CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.**

**RESERVED ON : JANUARY 14, 2020
PRONOUNCED ON: JANUARY 28, 2020**

JUDGMENT [PER PRADEEP NANDRAJOG, C.J.]:

1. M/s. Baf-Hira Builders Pvt. Ltd. by and under WP No. 7104/2002 has challenged an order dated 20th November, 2002 passed by the Collector Bombay Suburban District, limited to the same forfeiting its right in land ad-measuring 22 Acres (96,960 sq.mtrs.) bearing CTS No.5,

Village – Malvani, Taluka – Salsatte (Borivali). Eric Anselem Mendes and Austin Gabriel Mendes have by and under WP No. 2004/2015 challenged the same order in so far it has permitted to pay lease rental and 75% unearned income to regularize the breaches qua 20 Acre of land; with prayer that said permission ought to have been granted to them. Thus, the two writ petitions were heard together.

2. On 9th December, 2019 it was directed by this Bench that both petitions would be heard finally in the admission board on 14th January, 2020, on which date Counsel for the two writ petitioners addressed arguments and when the arguments commenced the learned Counsel for the State did not pray for hearing to be deferred. After Counsel for the two writ petitioners concluded their submissions at the hearing which lasted for a little over two hours, learned Counsel for the State made a request for an adjournment which was declined; calling upon learned Counsel to file the written submissions. Regretfully, the written submissions filed are no written

submissions in the eyes of law because what has been stated in the written submissions is that all the points urged by learned Counsel for the writ petitioner of WP No. 7104/2002 have been dealt with by the learned Collector in the counter affidavit filed and the reasoning therein be treated as the written submissions of the State.

3. Way back, on 5th March, 1935, late Shri Lawrence Francis Mendes (at some places name recorded as Lerems Francis Man) made an application to the then Collector requesting a lease of 42 Acre and 15 Gunthas land bearing Survey No. 263 (Part) situated at Village Malvani, Taluka – Salsatte (Now Borivali) be granted to him. The land was marshy and was proposed to be reclaimed; to render it fit for use as agricultural land. The permission was granted on 9th December, 1936, expressly recording that the same was subject to the terms and conditions of Rule 40 of the Bombay Land Revenue Rules, 1921. The Rule, *inter-alia*, provides that the grantee had to reclaim half of the land within 10 years from the

date of sanction and the balance half within 20 years of the date of the grant. The reclamation was to render the land fit for cultivation. The said Rule 40 also provides that if the reclaimed land is used for non-agricultural purpose its rent shall be liable to be revised according to the rates applicable. Being relevant for our discussion hereinafter, we note the relevant part of the Rule, which reads as under:-

“40. ...

(e) If the reclamation is not carried on with due diligence within two years, or if half the area is not reclaimed so as to be in a state fit for use for Agricultural purposes at the end of ten years, and the whole at the end of twenty years, or if any land once reclaimed as aforesaid is not maintained in a state fit for use for agricultural purposes, the lease shall be liable to cancellation at the discretion of the Collector;...

(f) If the land reclaimed is used for any non-agricultural purpose its rent shall be liable to be revised according to the rates under whichever of Rules 81 to 85 has been applied to the locality notwithstanding that any of the period specified above may not have expired...”

4. On 29th August 1952, a report was furnished by the

Circle Inspector, which *inter-alia* records that the allotted land was duly reclaimed and was under cultivation. This was obviously before 20 years from the date of the grant. On 1st October 1957, a report was also made by the Mamlatdar of Borivali which also records that the allotted land was duly reclaimed. In the report it is recorded that the name of the grantee be entered in the sanad. **(Neither of these documents i.e. the report by the Circle Inspector and by the Mamlatdar or their contents have been disputed or denied by the Respondents).** The report reads as under:-

“ Submitted for D.D.C. B.S.D. Bomaby from the perusal of the case papers it appears that the land in question was granted to the applicant on reclaim lease.

The land in question has been reclaimed by the applicant completely. The land may therefore please be ordered to be entered applicant name and sanad may be ordered to be got executed”.

5. Apparently, in view of the two reports which recorded a satisfaction that the entire land had been reclaimed, as required under the terms of the sanction for the grant and

Rule 40 of the Bombay Land Revenue Rules, 1921, the Governor of Maharashtra executed a Reclamation Lease on 2nd April 1962 in the name of allottee (“**Reclamation Lease**”). Being relevant for our decision, the relevant covenants of the Lease are as under:-

“TO HOLD the said Lands unto the Lessee for the term of 999 years from the 9th day of December 1936... ..”

“AND the Lessee hereby covenants and agree with the Lessor in manner following that is to say FIRST that the Lessee shall at his own expense and with due diligence completely reclaim the lands hereby leased so as to be in a state fit for use for agricultural purposes AND shall so reclaim at least one-half of the said lands within ten years and the whole thereof within twenty years from the 9th day of December 1936 respectively and shall maintain such Reclamation during the residue of the term hereby granted AND SHALL not until the whole of the said lands shall have been completely reclaimed and rendered cultivable assign or underlet the said lands or any portion thereof or charge or receive any Tax or Fee for Cattle grazing upon any portion thereof without the previous consent in writing of the Collector. And that the lessee shall not at any time partition, bequeath, alienate, assign, mortgage, or otherwise charge or encumber or

allow to be cultivated, used for occupied by any other person, any portion of the said land less than the area hereby fixed by the Collector as an economic holding in respect of the said lands nor shall any such portion of the said Land be liable to seizure, sequestration, attachment, sale or partition by process of a Court...

..PROVIDED ALWAYS AND IT IS HEREBY AGREED THAT if an whenever there shall be a breach by the Lessee of any Covenant, Condition, or Provision herein contained the Lessor may re-enter upon the said lands or upon part thereof in the name of the whole and thereupon this Lease shall determine AND that in case of default shall be made in reclaiming the half or the whole of the Lands within the periods respectively hereinbefore prescribed in that behalf the Lessor may re-enter upon the said Lands and determine this Lease under the power in that behalf hereinbefore contained...

...AND that notwithstanding anything hereinbefore contained if at any time any portion of the said Lands (other than such portion as may be appropriated for Public Roads) is after being reclaimed use for any purpose unconnected with agricultural such portion shall be liable to such assessment or altered assessment as may be leviable under the Law or Rules having the force of Law for the time being in force in respect of Land which is held for agricultural purposes, and subsequently used for purposes unconnected with agriculture and such assessment or altered assessment shall

be leviabale notwithstanding that any of the periods hereinbefore specified shall not have elapsed AND that the right of the said Lessor to all Mines and Mineral Products and a full liberty of access for the purpose of working and searching for the same with all reasonable conveniences shall be reserved.”

6. From a perusal of the afore-noted contents of the reclamation lease dated 2nd April, 1962 it can be gathered that:

i. The period of the lease is for 999 years commencing from 9th December 1936;

ii. One half of the allotted land was required to be reclaimed fit for agricultural purpose within 10 years (i.e. by 9th December 1946);

iii. The balance half of the allotted land was required to be reclaimed fit for agricultural purpose within 20 years (i.e. by 9th December 1956);

iv. Assignment/sale of the land is permitted. However, if assignment/sale is before reclamation then prior permission of the Collector is necessary. The Collector's permission is also

necessary if the assignment/sale is of less than an economic holding (economic holding defined under the Maharashtra Land Revenue Code as 3.24 acres).

v. If there is any breach of the terms of the Reclamation Lease the Governor may re-enter upon the demised land and the lease shall determine.

The terms of the lease therefore, *prima facie*, do not require any permission of the Collector for assignment/sale if the same is done after reclamation is complete and the area assigned or area retained is not less than an economic holding. Further, non-agricultural use, after reclamation of the entire land, is permitted by the Reclamation Lease and also by Rule 40 of the Bombay Land Revenue Rules, 1921 but upon revision of the rent according to the rates as per the Rules.

7. On 13th November 1970, Shri Lawrence Francis Mendes died and the lease-hold interest devolved upon his heirs. Name of his wife Anu Mendes was entered in the revenue

record. On 23rd June 1971, the Talathi issued a 7/12 extract of the demised land recording that the same was under rice cultivation, from which it can once again be inferred that reclamation of the entire land had been completed.

8. How and under what circumstances and when it happened, the admitted position is that the demised land ad-measuring 42 Acre and 15 Guntha bearing Survey No. 263 (Part) came to be divided into two parts and assigned CTS No. 5 and CTS No. 8 respectively; the former ad-measuring 96,960 sq.mtrs. and the latter 74,450 sq.mtrs. respectively.

9. Anu Mendes executed and got registered two deeds of assignment, both dated 3rd October, 1974, which were also signed by Gabriel Francis Mendes, Anton Francis Mendes, Anselm Francis Mendes, Paulin John Patel, Johana and Olga Rodrigues in favour of Baf-Hira Builders Pvt. Ltd. Thus, the lease-hold interest created by the reclamation lease dated 2nd April, 1962 came to be transferred to Baf-Hira Builders Pvt.

Ltd. The demise being of the entire leased land the question of any holding less than the economic holding sold or retained does not arise.

10. On 15th March 1975, an Application was made by Baf-Hira Builders Pvt. Ltd. to the Sub-Divisional Office for grant of non-agricultural permission pertaining to CTS 8 land, so as to enable the Company to construct residential and commercial tenements thereon.

11. On 27th May 1975, the Municipal Corporation Greater Mumbai issued a Commencement Certificate permitting construction of tenements on CTS 8 land but on the terms contained therein.

12. On 20th January 1976 a stop work notice was issued by the Additional Collector, Bombay Suburban District, to the then Municipal Commissioner, *inter-alia*, informing that: [a] the lease with respect to the 42 Acre and 15 Guntha land had

expired; [b] assignment to Baf-Hira Builders Pvt. Ltd. was unauthorized being without the consent of the Collector; and [c] the construction thereon was unauthorized. **(Relevant would it be to record that it was not stated in the grounds of the stop work notice that the lease stood determined on account of reclamation of the land not being done within the period stipulated in the original grant permission or the lease.)**

13. On 17th February 1976, Baf-Hira Builders Pvt. Ltd. preferred Misc. Petition No. 259 of 1976 before this Court challenging the stop work notice dated 20th January 1976. On 30th April 1976, by way of a Minutes of Order passed in the said Petition the Directors of the Company undertook to demolish such unauthorized structures on the CTS 8 land which were executed in contravention of the commencement certificate dated 27th May 1975 and the Respondents were restrained from preventing the Company from in any manner proceeding with the construction of the building and structures

but strictly in terms of the Commencement Certificate.

14. On 18th February 1977, the Company and Respondents in the said Petition arrived at a settlement wherein it was agreed that the stop work notice dated 20th January 1976 would be withdrawn with liberty in favour of the Respondents therein to take such action in accordance with law under the Maharashtra Land Revenue Code, 1966 (the “**Code**”), the covenants of the lease and the laws as they consider proper.

15. On 15th April 1977, in light of the foregoing settlement, the Additional Collector by his letter of even date issued to the MCGM stated that owing to a settlement arrived at between the Company and the State of Maharashtra and the MCGM, the stop work notice dated 20th January 1976 was being withdrawn. Accordingly, the Company commenced execution of further works to complete the various buildings required to be constructed as per the Commencement Certificate.

16. On 29th August 1979, Baf-Hira Builders Pvt. Ltd. assigned/sold a portion of CTS 8 land ad-measuring approximately 34,990 square meters to one Indo-Saigon Construction, whose proprietor is one Mr. Daryarani.

17. On 8th November 1979, an Order was passed by the Additional Tehsildar, *inter-alia*, regularizing the non-agricultural use of land comprised in CTS No. 8, with the construction thereupon for residential and commercial purposes, subject to terms and conditions as set out therein. It is thus apparent that in terms of said order the land forming subject matter of the order could be used for non-agricultural purpose and the lease-hold right with respect to the same can be assigned without permission of the Collector as long as the area is not less than an 'economic holding'. The same flows out of the following extract of the said Order:

“On going through the copy of Reclamation lease that an area of 42 Acres 15 Gunthas out of

S. No. 263(P) of Village Malawani, Taluka – Borivali for reclamation on usual terms and conditions. The lease was actually granted from 9.12.1936 and the lease document was executed on 2.4.62 for 999 years. According to concluding portion of document of the Sanad there appears no objection to assign any portion of land not less than the area fixed as an economic holding. The IOD and commencement Certificate have already been issued by the Greater Bombay Municipal Corporation in favour of M/s. Baf-Hira Builders Pvt. Ltd. Similarly in the approved plan in the column of name of owner the name of M/s. Baf-Hira Builder is shown.

In exercise of powers delegated to me under section 5, 7(b) & 11 of M.L.R.C. 1966 and under Additional Collector B.S.D.'s Order No. C/Desk-2/N.A.A.667 dated 13.6.78, I am pleased to regularize the Unauthorised N.A. use of the above mentioned land together with the construction as shown in the letters A B C D in the appended approved plans for the purpose of Residential and commercial in favour of M/s. Baf-Hira Builders Pvt. Ltd. ...”

18. Constructions were completed and various flats were transferred to third parties who are in occupation of the same since the year 1980.

19. On 15th April 1981, a show cause notice was issued by the Additional Collector to Baf-Hira Builders Pvt. Ltd. alleging that the 42 Acre and 15 Guntha land was not reclaimed and, therefore, Baf-Hira Builders Pvt. Ltd. was called to show cause as to why the lease ought not to be determined on said ground i.e. non reclamation of the land within the period prescribed under the grant. Apparently, the show cause notice was issued in exercise of the liberty granted to the Collector under the order dated 18th February, 1977 passed in Misc. Petition No. 259/1976.

20. On 14th December 1981, the Advocates of Baf-Hira Builders Pvt. Ltd. responded to the show cause notice dated 15th April 1981 and, *inter-alia*, set out all the facts and provided all the documents which as per them demonstrated that the 42 Acre and 15 Guntha land had been duly reclaimed within the requisite period as provided under the Reclamation Lease.

21. No order came to be passed disposing of the show cause notice dated 15th April, 1981.

22. In the year 1982, a Property Card in respect of the 42 Acre and 15 Guntha land was updated in the name of the Baf-Hira Builders Pvt. Ltd.

23. On 10th September 2001 (i.e. nearly 20 years after the issuance of the show cause notice dated 15th April 1981), the Respondent No.1 i.e. the Collector Bombay and Suburban District issued a fresh and independent show cause notice to the Baf-Hira Builders Pvt. Ltd. on completely new and different grounds, calling upon the Baf-Hira Builders Pvt. Ltd. to show cause as to why: (a) the Reclamation Lease should not be terminated on the ground that prior permission for assignment was not taken from the Collector for assignment of the Reclamation Lease in favour of Baf-Hira Builders Pvt. Ltd. and other sub-lessees being Indo-Saigon Construction; and (b)

unearned income was not paid on such assignment. The said show cause notice makes no reference to the earlier show cause notice dated 15th April, 1981, and much less records that the notice dated 10th September 2001 be treated as stating additional grounds supplementing the earlier show cause notice dated 15th April, 1981.

24. On 30th October 2001, Baf-Hira Builders Pvt. Ltd. preferred Writ Petition No. 5311 of 2001 challenging the said show cause notice dated 10th September 2001. By an order dated 10th January 2002, this Court was pleased to dismiss this Writ Petition. An Appeal registered as No. 16 of 2002 was preferred against said order and by an Order dated 21st January 2002 which was disposed of directing that the Collector could decide the issues arising out of the show cause notice dated 10th September, 2001.

25. On 20th November, 2002, the order impugned in

the Writ Petition filed by Baf-Hira Builders Pvt. Ltd. came to be passed, in respect of which order the Writ Petitioners of WP No. 2004/2015 claim that the remedial rights granted in the order should have been in their favour and not in favour of Baf-Hira Builders Pvt. Ltd. or its assignee.

26. On the anvil of the aforesaid facts, Mr. Virag Tulzapurkar, learned Senior Counsel for Baf-Hira Builders Pvt. Ltd. submitted that the Impugned Order suffers from, *inter-alia*, the following illegalities:

A. That the Impugned Order goes beyond the issues raised in the show cause notice dated 10th September 2001.

(i) That the show cause notice dated 10th September 2001 was issued only on two grounds i.e. (a) prior permission for assignment of the lease was not taken from the Collector; and (b) unearned income was not paid by the Petitioner on such assignment/ sale.

(ii) However, by way of the Impugned Order, the

Respondent No.1 has dealt with the issue of '**non-reclamation**' and based his order thereon, which was not part of the show cause notice dated 10th September 2001. The Petitioner was not required to meet that case in the show cause notice dated 10th September 2001. Hence, the principles of natural justice were violated, vitiating the Impugned Order.

(iii) To explain away this *ex-facie* exercise of going beyond the show cause notice dated 10th September 2001, vitiates the order; it was urged that the Respondent No.1 has erroneously relied upon the earlier show cause notice of 15th April 1981 and the provisions of Section 257 of the Maharashtra Land Revenue Code. Learned Senior Counsel submitted that Section 257 of the Maharashtra Land Revenue Code cannot be invoked in such a case and Respondent No.1 was required to act within reasonable time from the issuance of the 15th April 1981 show cause notice which was duly replied to by the Petitioner by way of its letter dated 14th December 1981. Therefore, it was submitted that Respondent No.1 could

not have passed any order nor taken such coercive action after a span of 20 years on the basis of the prior show cause notice dated 15th April 1981, which as per learned Senior Counsel stood concluded, dropped and given up by the Respondents in December 1981 itself.

(iv) Learned Senior Counsel further submitted that since the lease-deed did not require any sanction or prior consent from Respondent No. 1 for the lease-hold interest to be transferred or assigned after the land was fully reclaimed the question of levy of unearned income did not arise nor the question of any prior permission of the Collector arose. The only right vested in favour of the Collector under the lease-deed was to revise the rent upon change of user from agriculture to non-agriculture.

(v) In the circumstances, it was submitted by learned Senior Counsel that Respondent No.1 had exceeded the scope of the show cause notice dated 10th September 2001 pursuant to which the Impugned Order came to be passed.

B. The second contention advanced by learned Senior Counsel was that the Impugned Order has been passed in breach of the principles of natural justice because the same heavily relies on material and documents which were never made available to the Petitioner during the course of the proceedings before Respondent No.1; and were also not referred to in the show cause notice.

(i) Mr. Tulzapurkar submitted that, without prejudice to the contention that Respondent No.1 could not decide the issue of reclamation by way of the Impugned Order owing to it being beyond the scope of the show cause notice dated 10th September 2001, it has decided the same by relying upon the following documents which did not form a part of the proceedings before Respondent No.1 :

a. The show cause notice dated 1st March 1967 issued by the Tahsildar;

b The notice dated 7th February 1969 issued by the then Sub-Divisional Officer;

c. The report dated 12th February 1969 by the Sub-Divisional Officer;

d. The Report prepared by the Tahsildar on 7th September 1973;

e. The Report prepared by the Tahsildar on 7th September 1974;

f. The Panchnama drawn up by the Tahsildar and the Circle Inspector on 3rd July 1976;

(ii) Furthermore, Mr. Tulzapurkar also submitted that whilst on the one hand Respondent No.1 has referred to and relied upon the aforementioned documents in the Impugned Order to hold that the demised land was not duly reclaimed, it failed to take into consideration the report dated 29th August, 1952 by the Circle Inspector and report dated 1st October, 1957 by the Mamlatdar, both of which recorded that the entire

land was reclaimed. Further, it ignore the 7/12 extract recorded on 23rd June 1971 as per which the entire land was shown under rice cultivation.

C. Thirdly, it was submitted without prejudice to the earlier contentions, that in any event the issue of alleged non-reclamation, which had been raised in the show cause notice dated 15th April 1981 could not be raked up in 2001-2002:

(i) Mr. Tulzapurkar submitted that the stop work notice of 20th January 1976 (as stated above) was issued, *inter-alia*, on the ground of assignment of the lease in favor of the Petitioner without due permission of Respondent No.1.

(ii) By an Order dated 18th February 1977 in Misc. Petition No. 259 of 1976, this stop work notice was withdrawn by the Respondents with liberty to take such action in accordance with the Maharashtra Land Revenue Code, the covenants of the lease and the law as they consider proper. This liberty was exercised by the Respondent No.1 when the show

cause notice of 15th April 1981 came to be issued. However, after receiving the response thereto dated 14th December 1981 of the Petitioner, no action came to be taken by the Respondents with respect to the same. Therefore, it is clear that the issue forming a part of the show cause notice dated 10th September 2001 were duly concluded/settled in 1981.

(iii) Therefore, it was submitted that the issue of alleged non-reclamation could not be raked up in 2001-2002 as this would be hit by the doctrine of reasonable time. In fact, to overcome the abandonment of the 15th April 1981 show cause notice, Respondent No.1 has purported to hold in the Impugned Order at paragraphs 10.2 and 10.8 that the same was not taken to its logical conclusion and since it is a 999 year lease, action with respect to the same can be taken at any time during subsistence of the lease, even if the same is raised and abandoned. Mr. Tulzapurkar submitted that such a finding is untenable in law. It is well settled that, any action must be taken

by an Authority within a reasonable time, and twenty years from 1981 could never be so. Hence, in that view of the matter, the Respondent No.1 could not have invoked the alleged ground mentioned in the show cause notice dated 15th April 1981 in 2001-2002 and purport to act upon the same and base the Impugned Order thereon.

D. Fourthly, the Reclamation Lease explicitly provides that the lease-hold rights with respect to the leased land can be assigned without prior permission of the Collector:

(i) Mr. Tulzapurkar pointed out that in paragraph 14 of the Impugned Order Respondent No. 1 has *inter-alia* held that the lease-hold rights with respect to the leased land can be assigned / transferred only with the prior permission of the Collector.

(ii) Mr. Tulzapurkar, whilst relying upon the excerpts of the Reclamation Lease as reproduced hereinabove, submitted that the Reclamation Lease expressly provided that assignment

of the same can take place without the prior permission of Respondent No.1 so long as the Larger Land is duly reclaimed; and the transfer is of not less than an economic holding (being 3.24 acres).

(iii) He further pointed out that it is the case of Respondent No.1 itself that the lease is governed by the terms of the Reclamation Lease and the same are conclusive. In support of this contention, he relied upon the admission in this regard made by Respondent No.1 in paragraph 16 in its Affidavit in Reply filed in the Writ Petition. Mr. Tulzapurkar thus submitted that since it is Respondent No. 1's own case that the governing terms are those in the Reclamation Lease, the assignments of the lease-hold rights in favor of Baf-Hira Builders Pvt. Ltd. were valid, legal and proper and neither the prior permission of the Collector nor payment of any unearned income was required. The Reclamation Lease does not contain any provision for payment of any unearned income, hence no question arose for the Collector demanding the same.

(iv) Without prejudice to the above, he submitted that the issue of the Respondent No. 1's permission stood concluded in 1981 since the letter dated 14th December 1981 issued by the Petitioner has remained uncontroverted till date. Accordingly, the same could not have been raked up again in 2001 by way of the show cause notice dated 10th September 2001.

E. Fifthly, learned Senior Counsel submitted that the demised land was duly reclaimed.

(i) Mr. Tulzapurkar pointed out that at paragraph 11 of the Impugned Order, Respondent No. 1 has held that demised land was not duly reclaimed.

(ii) Mr. Tulzapurkar submitted that from the following facts it is abundantly clear that the demised land was duly reclaimed and/or made fit for agricultural purpose within the requisite time-period as set out in the Reclamation Lease:

a. The Circle Inspector's Report dated 29th August

1952, the contents of which are uncontroverted. With respect to this Report, Mr. Tulzapurkar submitted that the same is not on record of these proceedings, however, this Report has been specifically mentioned in the reply to the show cause notice dated 14th December 1981. Mr. Tulzapurkar submits that this letter has gone uncontroverted. Moreover, he also submits that even in the Impugned Order and the Affidavit in Reply filed by Respondent No. 1 in the present proceedings there is no dispute with respect to this Report;

- b. The report of the Mamlatdar dated 1st October 1957;
- c. The fact that Respondent No.2 executed the Reclamation Lease on 2nd April 1962, after full satisfaction that all the requirements / conditions were fulfilled;
- d. The Order dated 8th November 1979 passed by the Add. Tehsildar, inter alia regularizing the unauthorized N.A. use of CTS 8 land;
- e. When the issue of reclamation was raised by the

Show Cause Notice of 15th April 1981, the Petitioner duly replied to the same by its letter of 14th December 1981 placing all material on record which demonstrated that the land had been duly reclaimed. Thereafter, no steps were taken by the Respondents with respect to the reclamation issue, which clearly demonstrates that the issue was given up and/or abandoned.

f. The Property Card in respect of the demised land was updated in the name of the Petitioner in 1982.

(iii) Mr. Tulzapurkar also submitted that Respondent No. 1 by way of the Impugned Order has sought to overcome the Circle Inspector's report of 29th August 1952 by contending at paragraph 11.7 that the report only speaks about cultivation and not reclamation. In response to this, Mr. Tulzapurkar pointed out that there cannot be any cultivation without due reclamation of land.

F. Lastly, learned Senior Counsel submitted that the

demised land can be used for non-agricultural purposes:

(i) It was pointed out that at paragraph 12 of the Impugned Order, Respondent No. 1 has *inter-alia* held that the land cannot be used for a non-agricultural purpose.

(ii) To negate the aforementioned finding of Respondent No. 1, Mr. Tulzapurkar submitted that the lease was sanctioned on the basis of the sanction letter dated 9th December 1936 which *inter-alia* provided that the same is being sanctioned subject to the terms and conditions of Rule 40 of the Bombay Land Revenue Rules, 1921. Rule 40(f) clearly provides that the demised land can be used for non-agricultural purposes.

(iii) Furthermore, the following portion of the Reclamation Lease, which is a non-obstante clause, makes it abundantly clear that the land can be used for a non-agricultural purpose:

“...AND that notwithstanding anything hereinbefore contained if at any time any portion of the said Lands (other than such portion as may be appropriated for Public Roads) is after

being reclaimed use for any purpose unconnected with agricultural such portion shall be liable to such assessment or altered assessment as may be leviable under the Law or Rules having the force of Law for the time being in force in respect of Land which is held for agricultural purpose, and subsequently used for purposes unconnected with agriculture and such assessment or altered assessment shall be leviable notwithstanding that any of the periods herein before specified shall not have elapsed AND that the right of the said Lessor to all Mines and Mineral Products and a full liberty of access for the purpose of working and searching for the same with all reasonable conveniences shall be reserved.”

(iv) At paragraph 13 of the Impugned Order, Respondent No.1 has sought to interpret the aforementioned term to mean that only ‘a portion of’ the demised land can be used for non-agricultural purpose and not the whole. Whilst relying upon ground (k) of Writ Petition No. 7104 of 2002, Mr. Tulzapurkar submitted that a bare reading of the Reclamation Lease does not bear out an intention that only a portion of the demised land could be utilized for non-agricultural use. He further submitted that the aforementioned

portion of the Reclamation Lease when referring to '*any portion*' is relevant to and used only for the purposes of apportionment of assessment of such portion of land which are under non-agricultural use and which are under agricultural use and the same does not signify that only a portion of the land can be used for non-agricultural purposes.

(v) Without prejudice to the above, Mr. Tulzapurkar also submitted that even if one goes by the logic of the Respondent No.1, only a portion of the demised land i.e. a portion of the CTS 8 Land is being used for a non-agricultural purpose; therefore, there is no breach of the Reclamation Lease as alleged by Respondent No. 1 in the Impugned Order.

27. In view of the foregoing submissions, Mr. Tulzapurkar, learned Senior Counsel for the Petitioner, submitted that that the Impugned Order is illegal and ought to be set aside.

28. Concerning WP No. 2004/2015, the case pleaded is that the deeds of assignment dated 3rd October 1974 on which M/s Baf-Hira Builders Pvt. Ltd. rely are forged document and thus no assignment has taken place and thus the right vested to regain the wrongs committed conferred by the order dated 20th November, 2002 by the Collector in favour of Baf-Hira Builders Pvt. Ltd. or its assignee be directed to be the rights conferred upon the Petitioners.

29. Pertaining to WP No. 2004/2015, suffice it to record that a title dispute cannot be decided in writ jurisdiction and a plea of an indenture of assignment being a forged document because the alleged signature or thumb impression of the executants thereof are not those of the executants requires evidence to be led, and apart from the unexplained delay in questioning the indentures of assignment, same would be a reason to dismiss WP No. 2004/2015.

30. As noted in paragraph 2 of our present opinion,

learned Counsel for the State of Maharashtra and the Collector made no oral submissions at the hearing held on 14th January, 2020 and in the written submissions filed has simply stated that all contentions advanced by learned Counsel for Baf-Hira Builders Pvt. Ltd. having been dealt with by the Collector in the impugned order dated 20th November, 2002, the same be read as the response to the arguments of Shri Virag Tulzapurkar, Senior Counsel, a stand in the written submissions, which is indeed baffling because to the reader of our opinion it becomes self evident that 90% of the contention advanced to challenge the order are based on facts and inferences to be drawn thereon which do not form part of the impugned order.

31. Before dealing with the contentions advanced, at the out-set, we record and note that with respect to 20 Acre land comprised in CTS No. 8 on which buildings were erected by Baf-Hira Builders Pvt. Ltd. after taking permission from the MCGM and which right to construct, together with interest in

the land was assigned by Baf-Hira Builders Pvt. Ltd. in favour of Indo-Saigon Construction, the sole proprietor firm of one Mr. Daryarani, he has paid the demand as per the impugned order to rectify the alleged breach and to said extent the issue of resumption of the lease qua said part of the land has worked itself out and even as per the impugned order the lease pertaining to said 20 Acre land cannot result in any resumption.

32. Having noted the backdrop of the facts and the submissions of learned Counsel for the parties, it would be profitable if we summarize the contents of the order dated 20th November, 2002 which is fairly prolix inasmuch as it spans 43 pages.

33. The order proceeds with the recording of the facts pertaining to the grant in favour of Mr. Lawrence Francis Mendes in the year 1936 and purpose of the grant. It records the terms of the grant. It records the events leading to Baf-Hira

Builders Pvt. Ltd. filing Misc. Petition No. 259/1976 and the compromised order passed therein on 18th February 1977. It records the issuance of the notice dated 15th April 1981 alleging breach on the fact of non-reclamation of the land within 20 years of the grant. In paragraph 4 of the order it is recorded: *'However, it seems that this notice was not taken to logical end'*. In the same paragraph it is further recorded: *'In furtherance of the Court Consent and in continuation of the earlier notice dated 15/4/1981, a notice dated 10/9/2001 was issued to M/s. Bafhira Builder to explain as to why 75% unearned income should not be charged for unauthorized transfer of land, without prior permission of govt. as provided in the lease agreement'*. It records that M/s. Baf-Hira Builders Pvt. Ltd. filed a reply to the notice dated 10/9/2001. In paragraph 9 the learned Collector has recorded that five issues emerge as under:-

“i) *Whether the proceeding initiated as per consent terms in W.P. No.259/1976 is time barred? Does lease deed provide for time limit to initiate proceeding for breach of terms and*

condition of the grant?

ii) What was the period for reclamation of land? Whether original grantee reclaimed the land in the prescribed time period?

iii) Whether non agricultural activity is allowed? If so, to what extent? What is the Principal user of land? If so, why?

iv) Whether land is transferable? If so, on what condition?

v) What are the breaches committed by lessee and subsequent holder of land?"

34. In the various sub paragraphs of para 10 of the order the learned Collector has decided the first issue settled by him.

35. The argument of Baf-Hira Builders Pvt. Ltd. was that the principle of reasonableness warrants action to be taken if breach of a term of a lease is alleged within a reasonable period of time. The view taken by the learned Collector is that it is open to the lessor to take action for breach of the terms of a lease at any point during the validity of the lease and there is

no law which requires action to be taken within a reasonable period of time between the date when the breach is noted and action taken. In para 10.8 of the order the learned Collector has categorically written: '*Hence, there is no question of reasonable time period*'.

36. The discussion in the various sub paragraphs of para 11 of the impugned order answers the second issue settled. Making a reference to the show cause notice dated 1st March 1967 issued by the Tahsildar, Borivali as also to a show cause notice dated 7th February 1969 issued by the Sub Divisional Officer as also an inspection report dated 3rd July 1976 by the Tahsildar recording that only 3 Acre of land was under paddy cultivation and the reports dated 12th February 1969, 7th September 1974 and 7th September 1973 by the S.D.O. and the Tahsildar and the Panchnama dated 9th July 1976, the learned Collector has recorded that these were brought to the notice of the grantee when the notice dated 15th April 1981 was issued. The order records that it was the case of the

noticee that the lease-deed dated 2nd April 1962 was executed after a satisfaction was recorded that the land was reclaimed. The learned Collector has opined that there was no co-relation between reclamation of the land and execution of the deed. With reference to the report dated 29th August 1952 by the Circle Inspector, relied upon by the noticee, the learned Collector has opined that the said report nowhere brings out that the land was reclaimed. The learned Collector has recorded that the report simply records that the land was under cultivation. There is no discussion on the report dated 1st October 1957 made by the Mamlatdar, which was relied upon by the allottee, recording that the allotted land was duly reclaimed. The order concludes by recording a finding that there being no machines such as JCB, Excavators etc., as are available currently, it would be impossible for the land to be reclaimed as claimed by the noticee and thus the finding that the land was not reclaimed within the period prescribed.

37. The discussion in the various sub paragraphs of para

12 of the order proceeds to determine the third issue settled by the learned Collector. The learned Collector has posed the questions: (A) What was the purpose for the land was granted? (B) Whether non-agricultural activities allowed? If so, to what extent? (C) What is the principal user of the land? If so, why?

38. The learned Collector has reasoned that the lease-deed was obviously to reclaim the land and render it fit to be used for agricultural purpose. The learned Collector has reasoned that if the grant had to be read as entitling the grantee to use the land for a non-agricultural purpose, the same had to be incidental to the main purpose. With reference to the argument that the covenants in the lease stipulated that if after reclamation a portion of the land was used for a purpose unconnected with agricultural then such portion would be liable to such assessment or altered assessment as may be leviable under the law, the learned Collector has held that the same would not warrant it to be held that the entire

land could be used for non-agricultural purpose. In para 12.12 the learned Collector has held : *'Having proved that the land was granted for agriculture purpose and the user of the land is agriculture only, it is consequent to find out whether lease deed provides for non agriculture use of land and if so to what extent and at what cost?'*

39. Notwithstanding said finding returned in paragraph 12.12, in various sub paragraphs of para 13 the learned Collector has proceeded to hold that only a portion of the land could be put to non-agricultural use and that too for a purpose incidental to agricultural. The learned Collector has emphasized the word *'portion'* in the lease-deed to hold that it would mean a small area, which had no connection to a economic holding. Referring to the non-agricultural permission granted by the Additional Tahsildar on 8th November 1979 in the form of regularizing the non-agricultural use of land comprised in CTS No. 8, the learned

Collector held that in the lease there was no provision for levying non-agricultural assessment and thus, has directed said order to be treated as void and entry in the 7/12 extract be struck off immediately.

40. The learned Collector has thereafter proceeded to answer the fourth issue settled in various sub paragraphs of paras 14, 15 and 16 of the impugned order to hold that there was an inherent condition of non transferability and thus, directed a correction to be made in the property card by striking out the name of Mr. Daryarani.

41. Proceeding to decide the fifth issue in various sub paragraphs of para 17 the learned Collector held that the breaches committed were: Firstly Anubai Mendes transferring land without permission from the Government to Baf-Hira Builders Pvt. Ltd. The second breach was the sale for a non-agricultural purpose. The third was a sale of agricultural land to a non-agriculturist. The fourth breach was the land not

being reclaimed within the 20 years period prescribed. The fifth was the transfer of the land sans the permission from the Collector. The learned Collector also held that lease rent post 1966 was not paid as per the prevailing law. Lastly, unearned increase was not paid.

42. The directions issued are in the various sub paragraphs of para 18, which read as under :-

“18.1 The proceeding initiated by notice dated 10/9/2001 is not time barred for simple reason, that this proceeding was initiated as per consent arrived at in W.P.No. 259/1976. Moreover, the earlier notice dated 15/4/1981, for non-reclamation of land, was not taken to logical conclusion. The issues raised in notice dated 15/4/1981 have also been addressed in this order. So also, the respondent has made submission in regard of non-reclamation of land. The lease being of 999 year and the govt. being owner of the land, it is always open to enquire in to breaches done during 999 years.

The objection raised by the petitioner that the proceedings are time barred, is therefore set aside.

18.2 The non agriculture assessment orders issued by Addl. Tahsildar (N.A.) Borivali on 8/11/1976 and 22/12/1979 are set aside, as on the lease land, NA cannot be levied. The lease agreement provides for levying of lease rent equivalent to NA assessment. The lessee was supposed to pay regular lease rent from 1966 onwards. The lease rent from 1966 to 1976 be recovered with interest on whole of the land or per rules and regulation time being in force. From 1976, onward the lease rent of 22 acre of land be recovered as per prevailing rules and regulation till today. So lease rent on 20 of remaining barren land where building have came be recovered as equivalent to NA assessment leviable by rules and regulating time being in force. This lease rent be recovered till today.

18.3 The name of Bafhira Builder Pvt. Ltd.

recorded as occupant on 7/12 extract and PRC be struck off at once. So also the name of Daryarani on 7/12 & PRC be struck off as its is illegal transfer, until the unearned Income as mentioned in earlier para no. 17.11 and 17.12 is paid and the transaction and quantum of unearned income are approved and validated by the Govt.

18.4 The Bafhira Builder Pvt. is directed to pay above lease rent within 7 days of demand letter so far as 20 acre of land is concerned. The lease rent be given within seven days after receipt of demand letter. Failing which, the whole land would stand forfeited. So also Bafhira Builder Pvt. Ltd. is directed to pay 75% unearned income as mentioned in earlier para as provides in Government Resolution dated 8/9/1983 within 7 days failing which land will be resumed.

18.5 The acre of barren land is forfeited to govt. the record be corrected accordingly. The Tahsildar Borivali and City Survey Officer,

Goregaon is directed to correct record in the name of govt. so far as 22 acre of land is concerned.”

43. Since overlapping facts have been discussed by the learned Collector while deciding the five issues settled by him while passing the order dated 20th November 2002, it would be profitable if we deal with the contentions advanced by Mr. Virag Tulzapurkar, learned Senior Counsel for Baf-Hira Builders Pvt. Ltd. with reference to the challenge to the legality of the order dated 20th November 2002.

44. The first issue which needs to be adjudicated is in relation to the third limb of the submission in para A of para 26 of the present opinion.

45. As noted above, the then Additional Collector issued a show cause notice dated 15th April 1981 calling upon Baf-Hira Builders Pvt. Ltd. to show cause as to why the lease be not terminated on the ground that the subject land was not

reclaimed within the period prescribed under the grant. In spite of reply being filed thereto on 14th December 1981, no order was passed disposing of the show cause notice till when pursuant to the second show cause notice dated 10th September 2001 the impugned order dated 20th November 2002 was passed i.e. after 21 years from the date when the show cause notice dated 15th April 1981 was issued.

46. Whilst it may be true, as observed by the learned Collector in the impugned order, that action can be initiated to terminate a lease during the subsistence of a lease if a term or a condition of the lease is violated; but the issue is: Whether a show cause notice can be kept pending without reasonable cause for 21 years and without notice to the noticee to whom a subsequent show cause notice is issued informing the noticee under the second show cause notice that even the first would be decided, can an order be passed pursuant to the first show cause notice?

47. The Respondents have not pleaded in their counter affidavit nor stated any fact in the impugned order as to what prevented the Collector to pass an order disposing of the show cause notice dated 15th April 1981 within a reasonable period of time. Nothing has been stated as to why the said show cause notice was decided after 21 years. In the decisions reported as (2009) 246 E.L.T. 141 (Delhi) R. M. Mehrotra vs. Enforcement Directorate, (2010) 254 E.L.T. 259 (Bom) Shirish Harshavadan Shah vs. Deputy Director, E.D., Mumbai and (2011) 264 E.L.T. 173 (Bom) Hindustan Lever Ltd. vs. UOI, orders passed after 10, 12 and 14 years respectively, of the show cause notices issued, which were challenged in the three respective petitions were held to be unlawful. The principle of law laid down in the three decisions is that revival of proceedings after long gap spanning over ten years without notice of hearing disclosing reasons for the delay, is not a matter of mere impropriety. It is a case of arbitrary exercise of power rendering the decision unlawful and contrary to the

principles of natural justice.

48. Thus, we declare that the impugned order dated 20th November 2002 in so far it proceeds to even decide the show cause notice dated 15th April 1981 is illegal and to said extent is void.

49. As noted above, the show cause notice dated 10th September 2001 limited the proposed action to determine the lease on two grounds alone. The first was that the reclamation lease was liable to be terminated on account of assignment of the lease-hold right without permission from the Collector and secondly unearned income not being paid.

50. While deciding the show cause notice the Collector decided even the show cause notice dated 15th April 1981 and held as a matter of fact that the land was not reclaimed within the period of 20 years in terms of the grant which came into effect on 9th December 1936.

51. Notwithstanding our decision concerning the impugned order relatable to the delay in deciding the notice dated 15th April 1981 we deal with the contention that even the finding qua said notice on merits is perverse.

52. In returning said finding the learned Collector has referred to two show cause notices dated 1st March 1967 and 7th February 1969 issued by the Tahsildar and the Sub Divisional Officer respectively as also an inspection report dated 3rd July 1976 prepared by the Tahsildar. The said reports were never made available to the noticee and it being settled law that all material intended to be relied upon requires to be supplied to the noticee we hold that reliance on the two show cause notices and the inspection report in the impugned order is illegal being contrary to the principles of natural justice.

53. The learned Collector has held that the report dated 29th August 1952 prepared by the Circle Inspector relied upon

by the noticee nowhere brings out that the land was reclaimed. In returning said finding it has, *inter-alia*, been opined by the learned Collector that in the years 1936 till 1956 earth moving machines, as are available today, were not available and thus it was impossible to believe that 42 Acre and 15 Guntha land had been reclaimed by manual labour.

54. To say the least, said presumptive finding is based on the *ipse dixit* of the learned Collector. Giant buildings exist which were constructed in an Era in 5 to 8 years when the machines and equipments available today to construct buildings were not invented. Rivers were dammed and canals laid down using only manual labour.

55. We find that there is no discussion in the impugned order with respect to the report made by the Mamlatdar on 1st October 1957 which was relied upon by the petitioner.

56. As regards the report dated 1st October 1957, contents whereof have been noted by us in paragraph 4 above, we

simply highlight that the Mamlatdar has used the expression '*completely*' while recording that the land has been reclaimed by the applicant completely. What more clarity could be found in a report! No wonder, the learned Collector has overlooked the report.

57. As regards the report dated 29th August 1952 it records that the allotted land was duly reclaimed and under cultivation. The learned Collector has opined that the said report only speaks about the land being under cultivation and nowhere brings out that the land was reclaimed. We are surprised at the said finding. The report records that the allotted land was duly reclaimed and was under cultivation. Further, how could the land be under cultivation if it was not reclaimed. Thus, even if the report only recorded that the entire land was under cultivation it had to be read as affirming that the land was reclaimed.

58. That apart, the learned Collector has failed to

appreciate that the two reports were sought for by the then Collector in view of the fact that the grant was made on 9th December 1936 requiring reclamation of the entire land within 20 years, which would be 9th December 1956. It is the case of Baf-Hira Builders Pvt. Ltd. that the allottee had completed the reclamation much before the 20 years period expired and had sought execution of the reclamation lease which triggered the process of the Circle Inspector and the Mamlatdar inspecting the land. It was only thereafter, in view of the reports, which recorded that the land was fully reclaimed that the reclamation lease dated 2nd April 1962 was executed.

59. In view of the unimpeachable evidence and the circumstances enwombing the said evidence in favour of Baf-Hira Builders Pvt. Ltd. we hold that the view taken by the Collector that the land was not fully reclaimed is a perverse view. We declare that there is sufficient material to hold that the land was reclaimed within 20 years time granted.

60. On the subject that the reclamation lease was liable to be terminated on the grounds of prior permission for assignment not being taken from the Collector and that unearned income was not paid on such assignment, the arguments of learned Senior Counsel for Baf-Hira Builders Pvt. Ltd. are extensive and have been noted by us in sub paras (iv) to (vi) of para 26-A and para D.

61. Relevant part i.e. relevant covenants of the lease have been noted by us in paragraph 5 above. The expression *'AND SHALL not until the whole of the said lands shall have been completely reclaimed and rendered cultivable assign or underlet the said lands or any portion thereof'* have been overlooked by the learned Collector. By clogging the right of assignment or underletting upon the fulfillment of the condition that the land should be completely reclaimed and rendered cultivable, the lease-deed self proclaims that assignment or underletting is restricted till when the land was completely reclaimed and rendered cultivable. Meaning

thereby, once reclaimed and rendered cultivable the land was capable of being assigned and underlet.

62. Law presumes a right in the lessee to assign the right under the lease unless there is a prohibition in the lease or by law or where the lease expressly states that the possessory rights conferred by the lease are exclusively to be enjoyed by the lessee.

63. In the instant case there is no such stipulation in the reclamation lease. Thus, in view of the fact that the instant lease clogs the right to assign or underlet till when the land was reclaimed and made fit for cultivable, it has to be held that the lease permitted assignment.

64. Further, there is more to say on this issue. The covenant goes on to read that the lessee shall not bequeath, alienate or assign or permit to be occupied by any person the demised land if the assignment results in the parcel of land

assigned being less than an economic holding or the portion retained being less than an economic holding. This means that the lease permits assignment but subject to the assignment not resulting in either the holding retained being less than an economic holding or the holding transferred being less than a economic holding.

65. Thus, we declare that the impugned order in so far it holds that the assignment was hit on account of prior permission not being obtained from the Collector is a result of misreading of the terms of the lease, which terms we find have as a matter of fact not even being noted by the learned Collector.

66. On the issue whether post transfer of lease-hold interest, whether the demised lands could be used only for agricultural purpose and if there was change in the user thereof to a non-agricultural use, was unearned income payable, we note that as per the lease-deed the covenant stipulates that if

after being reclaimed the land is used for a purpose unconnected with agricultural, such portion shall be liable to such assessment or altered assessment as may be leviable under the law or the rules. Further, it is the admitted case of the parties that the lease was subject to the terms and conditions imposed by Rule 40 of the Bombay Land Revenue Rules 1921, clauses (e) and (f) whereof have been reproduced by us in para 3 above. As per clause (f) if the land reclaimed was used for any non-agricultural purpose, its rent was liable to be revised according to the rates under whichever of Rules 81 to 85 applied. Thus, it has to be held that the land after reclamation could be used for a non-agricultural purpose with the only liability fastened being a revision in the rent payable.

67. The learned Collector has held in the impugned order, and rightly so, that the reclamation lease is the only document under which the rights and liabilities of the parties have to be determined. It being a Government grant the

reclamation lease would be governed by the Government Grants Act, 1895 and as per which Act the grant is the complete grant recording all the terms and conditions of the grant.

68. Thus, the grant not speaking about any unearned increase to be paid and requiring only an altered assessment to be levied, we hold that on the non-agricultural use of the demised land, the right of the Government was to alter the assessment and no more. We hasten to add. Since Indo-Saigon Construction has without demur taken benefit of para 18.4 of the impugned order, our declaratory decision and as a result quashing of the impugned order in said regard would not entitle Mr. Daryarani, the sole proprietor of Indo-Saigon Construction to claim the refund.

69. There is an independent reason to declare that unearned increase could not be demanded.

70. As noted above, on 8th November 1979 the learned Additional Tahsildar passed an order disposing of the show cause notice dated 25th October 1979, taking note of the fact that Baf-Hira Builders Pvt. Ltd. had put to non-agricultural use 7400 sq.mtrs. land by erecting structure thereon. The learned Additional Tahsildar has noted that the same was without the permission from the competent revenue authority as required under Section 44 of the Maharashtra Land Revenue Code, 1966. Exercising power delegated to him under Sections 5, 7(b) and 11 of the Maharashtra Land Revenue Code, 1966 and under Additional Collector B.S.D.'s order No. C/Desk-2/N.A.A 667 dated 13th June, 1978 he was pleased to regularize the non-agricultural use upon payment of the amounts mentioned therein including conversion tax amounting to ₹ 9,268.80. The said amounts were admittedly paid.

71. In the impugned order passed by the learned Collector, factual and legal flaws have been found with the

said order dated 8th November 1979 passed by the Additional Tahsildar.

72. In the show cause notice dated 10th September 2001 Baf-Hira Builders Pvt. Ltd. have not been put to notice that the said order was proposed to be cancelled or withdrawn. There is thus violation of the well recognized right of hearing before an order is passed which has civil consequences on the right of the person affected.

73. That apart, on the principle of law that actions have to be taken within a reasonable period of time in support of which we have referred to three judgments herein-above, we declare that the order dated 8th November 1979 passed by the Additional Tahsildar could not be revoked, declared illegal or cancelled after 23 years by the Collector and that too without putting Baf-Hira Builders Pvt. Ltd. to a notice that the Collector was proposed to cancel, withdraw, nullify or render nugatory the said order.

74. Thus, Writ Petition No. 7104 of 2002 filed by Baf-Hira Builders Pvt. Ltd. is allowed. The impugned order dated 20th November, 2002 passed by the Collector, Mumbai Suburban District is quashed with a clarification, that money deposited by Indo-Saigon Construction in terms of the order would not be refunded.

75. Writ Petition No. 2004 of 2015 is dismissed.

SMT. BHARATI DANGRE,J.

CHIEF JUSTICE