

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9434 OF 2016**

Shivaji Pandurang Chumbhale
Age 58 years, Occupation – Business,
Residing at 23, Pandurang Niwas, Sunderban Colony,
Lekhanagar, New Nashik – 422 009 ... Petitioner

versus

1. The Administrator, CIDCO,
Mumbai Agra Road, New Nashik – 422 009
2. State of Maharashtra ... Respondents

**WITH
WRIT PETITION NO. 9445 OF 2016**

Waman Pandurang Chumbhale
Adult, Occupation – Business,
Residing at Gulane, Post – Volholi,
Taluka and District Nashik ... Petitioner

versus

1. The Administrator, CIDCO,
Mumbai Agra Road, New Nashik – 422 009
2. State of Maharashtra ... Respondents

**WITH
WRIT PETITION NO.9447 OF 2016**

Kalpana Shivaji Chumbhale
Adult years, Occupation – Business,
Residing at 23, Pandurang Niwas, Sunderban Colony,
Lekhanagar, New Nashik – 422 009 ... Petitioner

versus

1. The Administrator, CIDCO,

Mumbai Agra Road, New Nashik – 422 009

2. State of Maharashtra ... Respondents

Mr. Rohaan Cama with Mr. Abhishek Deshmukh i/by Mr. Sanjiv Sawant, for Petitioners.

Mr. Ashutosh Kulkarni with Ms. Akanksha Helaskar, for CIDCO.

Mrs. M.P.Thakur, AGP, for State.

**CORAM : S.J. KATHAWALLA AND
MILIND N. JADHAV, JJ.**

**RESERVED ON : 3rd SEPTEMBER, 2021
PRONOUNCED ON : 28th SEPTEMBER, 2021**

JUDGMENT : (PER S.J.KATHAWALLA & MILIND N. JADHAV, JJ.)

1. The present common judgment disposes of the above three Petitions as the issue raised therein is virtually identical. The issue in the three Petitions broadly pertains to the Petitioners' contention that Respondent No.1, CIDCO (hereinafter "CIDCO") has wrongfully withheld delivery of possession of the subject plots and has deprived the Petitioners of possession of their respective plots for approximately 15 years, eventually purporting to cancel the allotment letters in favour of the Petitioners.

2. The Petitioners, in the written submissions furnished by them, have provided a table of the details pertaining to the three Petitions which may usefully be reproduced verbatim hereunder as the same sets out the relevant details pertaining to each of the plots forming the subject matter of the respective Petitions.

Sr. Nos.	Particulars	Shivaji Pandurang Chumble	Kalpana Shivaji Chumble	Waman Pandurang Chumble
1.	Writ Petition No.	9434 of 2016	9447 of 2016	9445 of 2016
2.	Allotment Order Date	08.12.2005 (Pg. 38)	08.12.2005 (Pg. 36)	06.03.2006 (Pg. 66)
3.	Details of the Plot allotted	Plot No.21, Sector A-1, NH Kartik at New Nasik.	Plot No. 20, Sector A-1, NH Kartik at New Nasik.	Plot No.19, Sector A-1, NH Kartik at New Nasik.
4.	Area	340.265 sq. meter	331.50 sq. meter	351.50 sq. Meter
5.	Rate as per Allotment orders	Rs. 5,152/- per sq. mtr.	Rs.4,513/- per sq. mtr.	Rs.2,911/- per sq. mtr.
6.	Total Lease Premium Payable	Rs.17,53,046/-	Rs.14,96,060/-	Rs.9,64,996.50/-
7.	Payments which were to made as per Allotment Order	i. Rs. 1,00,000/- paid on 11.11.2005 ii. Rs. 8,26,523/- first instalment to be paid on or before 20.01.2006 iii. Rs. 8,26,523/- second instalment to be paid on or before 20.02.2006	i. Rs.1,00,000/- paid on 11.11.2005 ii. Rs. 6,98,030/- first instalment to be paid on or before 20.01.2006 iii. Rs. 6,98,030/- second instalment to be paid on or before 20.02.2006	i. Rs.1,00,000/- paid on 16.11.2005 ii. Rs.4,32,498.25 first instalment to be paid on or before 06.04.2006 iii. Rs.4,32,498.25 second instalment to be paid on or before 06.05.2006.

8.	Details of the payment made by the Petitioners	i. Rs. 1,00,000/- paid on 11.11.2005 (Pg. No. 31)	i. Rs. 1,00,000/- paid on 11.11.2005 (Pg. No. 30)	i. Rs. 1,00,000/- paid on 16.11.2005 (Pg No.41)
		ii. Rs. 4,50,000/- paid on 13.3.2006 (Pg. No. 48)	ii. Rs. 4,00,000/- paid on 13.3.2006 (Pg. No. 46)	ii. Rs. 4,995/- paid on 19.12.2008 (Pg No.42)
		iii. Rs. 4,00,000/- paid on 24.4.2007 (Pg. No. 47)	iii. Rs. 4,00,000/- paid on 24.4.2007 (Pg. No. 47)	iii. Rs. 1,60,000/- paid on 21.11.2007 (Pg. No. 43)
		iv. Rs. 7,00,000/- paid on 14.1.2008 (Pg. No. 46)	iv. Rs.4,90,000/- paid on 14.1.2008 (Pg. No. 44)	iv. Rs. 1,50,000/- paid on 29.3.2007 (Pg. No.44)
		v. Rs. 1,03,046/- paid on 18.12.2008	v. Rs.1,06,060/- paid on 18.12.2008 (Pg. No. 45)	v. Rs. 1,00,000/- paid on 3.5.2007 (Pg No.45)
				vi. Rs. 3,00,000/- paid on 13.3.2006 (Pg. No.46)
				vii. Rs. 1,50,000/- paid on 13.12.2006 (Pg. No. 47)
				viii.Rs.1,41,315/- paid on 18.10.2010 (Pg. No.50)

3. Broadly stated, it is CIDCO's contention, with which the Petitioners are aggrieved, that the Petitioners in Writ Petition Nos.9434 of 2016 ("**Shivaji**") and 9447 of 2016 ("**Kalpana**") are required to pay Delayed Payment Charges ("**DPC**") on account of certain alleged delays in making payment of the Lease Premium. CIDCO contends that it was justified in not handing over the subject plots to the Petitioners and in eventually cancelling the allotments on account of the alleged non-payment of the above DPC. Admittedly, there is an interim stay order passed by this Court on the cancellation of the allotments.

4. As far as Writ Petition No.9445 of 2016 ("**Waman**") is concerned, it appears that certain DPC payments have been made and there is no claim by CIDCO that any DPC is payable as far as Waman is concerned or that any amount is payable as on date. This is borne out inter alia from the chart furnished by CIDCO giving its calculation of DPC, in the course of the hearing.

5. The facts leading to the filing of the present Petitions have been set out in the respective Petitions and in the Written Submissions filed on behalf of the Petitioners. There is no significant dispute to the factual matrix as set out above and the same is briefly set out hereafter.

6. CIDCO offered for lease certain plots within the Nasik area for a period of 60 years on the terms set out in the respective allotment letters of the parties. The total

lease premium was to be paid in two instalments on 20th January 2006 and 20th February 2006 (for Shivaji and Kalpana) and 6th April 2006 and 6th May 2006 (for Waman), after accounting for an initial EMD of Rs. 1 lakh which was paid towards registration charges prior to the allotment letters. As set out in the table above, while certain payments were made from time to time, the last and final payments were made by the Petitioners in Writ Petition Nos. 9434 of 2016 and 9447 of 2016 (Shivaji and Kalpana) on 18th December 2008.

7. It is a matter of record that between 2006 and 2008, and even as per CIDCO's best case, until 20th July 2010, no claim whatsoever was made by CIDCO on Shivaji or Kalpana to pay any DPC. It appears that in the case of Waman, certain payments were made on 18th October 2010 and as stated above, there is no claim for any outstanding DPC or payments qua Waman. CIDCO accepted the full payment made by Shivaji and Kalpana upto 18th December 2008 and appears to have raised no objection whatsoever thereto, at the relevant time. On the contrary in CIDCO's Affidavit in Reply in Shivaji's case, CIDCO has specifically averred that CIDCO "*...took the act of making the part payment of first instalment by the Petitioner on 15.03.2006 into consideration and further called upon the Petitioner to comply with the further terms and conditions of the contract.*". Thus, it seems that CIDCO had chosen to accept the payments made after the stipulated dates without contemporaneous demur or protest; the Petitioners contend that CIDCO had thus waived any objection to the same. This

aspect is dealt with subsequently.

8. Thereafter a series of communications were addressed by the Petitioners to CIDCO to remove encroachments on the subject plots between 2006 and 2010. In the Petitioners' Rejoinder Affidavits, photographs have been annexed of the encroachments on the subject plots.

9. In March 2010, there were certain internal communications of CIDCO recording, inter alia, that the full Lease Premium had been paid. Steps were required to be taken for execution of the Agreements to Lease.

10. CIDCO contends that by a letter dated 20th July 2010, the Petitioners were informed of the demand for DPC, but that the same was allegedly not paid by the Petitioners. The Petitioners have specifically averred that they had never received this letter.

11. Reliance has been placed by CIDCO on a letter dated 22nd September 2010, addressed by Shivaji to CIDCO wherein *inter alia* an objection has been raised by Shivaji to a demand for DPC, to contend that the Petitioners were aware of the demand for DPC. Pertinently, in the very same letter the Petitioners have objected to CIDCO's failure to hand over possession of the plots and have opposed the demands being made for DPC.

12. CIDCO did not specifically respond to the above letter of 22nd September 2010. Instead, CIDCO relies upon a further letter dated 17th August 2012, two years later, in which a reference is made to the above letter of 22nd September 2010 and it is claimed that CIDCO / the State Government had rejected the proposal for exemption from levying interest. However, there does not appear to be anything to show that this letter was ever served upon the Petitioners. CIDCO claims that the same was served upon one Mr. Bhosale on behalf of the Petitioners, which claim is strenuously disputed by the Petitioners, as the Petitioners have stated on oath that they never had any so called Mr. Bhosale in their employment who would receive letters on their behalf, or otherwise. In paragraph 12 of Writ Petition No. 9434 of 2016, it is specifically averred that a photocopy of the above letter dated 17th August 2012 was given to the Petitioners only on 28th December 2015 and the Petitioners immediately addressed a letter dated 28th December 2015, recording inter alia that they had never received the letter dated 17th August 2012. To this letter of 28th December 2015, there is no reply, let alone any corresponding denial of the same by CIDCO.

13. By the impugned communications dated 13th July 2016, CIDCO cancelled the allotment letters issued in favour of the respective Petitioners after forfeiting 25% of the amount deposited by them with CIDCO. The Petitioners moved this Court in the present Writ Petitions. Thereafter on 10th August 2016, CIDCO forwarded cheques for the sums of Rs. 12,39,784/-, Rs. 10,47,045/- and Rs. 7,90,082/- in Writ Petition

Nos. 9434 of 2016, 9447 of 2016 and 9445 of 2016, respectively. The Petitioners however contend that while the letters have been referred to in CIDCO's Affidavit in Reply, the cheques have never been received by the Petitioners.

14. Ad-interim relief was granted by this Court, staying the execution, operation and implementation of the impugned cancellation letters and restraining CIDCO from allotting the subject plot to any third party.

15. When the matter appeared before this Court on 31st March 2021, CIDCO was called upon to inform the Court as to the amount of DPC that CIDCO claims was payable by the Petitioners, and in the event the Petitioners were agreeable to paying DPC, whether CIDCO would be in a position to hand over the subject plots free of encroachments.

16. When the matters were listed before the Court on subsequent dates, both sides furnished a table of calculations to the Court. As per CIDCO's final table for a base DPC amount claimed of Rs. 3,43,348/- as on the date of the last payment made by the Petitioner in Writ Petition No. 9434 of 2016, i.e. Shivaji, CIDCO claimed an amount of Rs. 12,18,204/-, as being due and payable as on date computed with interest at the rate of 16% p.a. on the basis of a Resolution No.8840 furnished by the learned Advocate for CIDCO. Likewise, in Writ Petition No. 9447 of 2016 against a base DPC amount claimed of Rs. 2,73,511/-, as on the date of the last payment made by Kalpana,

CIDCO claimed an amount of Rs. 9,70,421/- as and by way of DPC including interest at the rate of 16% p.a. till date. In Writ Petition No. 9445 of 2016, admittedly, there is no claim for DPC.

17. The Petitioners have furnished their own computation, which shows the DPC with interest calculated as per the above Resolution No. 8840 (which provides for 12% for the first three months of delay and 16% thereafter). The Petitioners' calculations show interest computed upto the date of the last payment, i.e. 18th December 2008. It has been submitted by the Petitioners that this computation is furnished without prejudice to their primary submissions that the same is not payable for the reasons discussed hereafter.

18. Broadly stated the alternative contentions of the Petitioners, as urged by Shri Cama, learned Counsel on their behalf, may be summarized as under:

- (a) CIDCO having accepted, without demur or protest, the payments after the due dates set out in the allotment letters, is deemed to have waived any objection to any alleged delay, and therefore the Petitioners are not liable to make any payment of DPC, let alone interest thereon, whatsoever;
- (b) Under Section 63 of the Indian Contract Act, 1872, there has been a waiver of enforcement of the contractual timelines by CIDCO and

therefore the said waiver amounts to a release of any obligation on the part of the Petitioners to pay DPC, precluding any claim by CIDCO for the same. Reliance has been placed on the judgement of the Supreme Court in *Jagad Bandhu Chatterjee vs. Neelima Rani*¹;

- (c) Without prejudice, it is contended that CIDCO, having accepted the above payments and having in effect represented that it had no objection to the delay in payments, which representation was acted on by the Petitioners by making further payments, is now estopped from seeking to claim any DPC or further interest. Reliance has been placed on the judgment of the Supreme Court in *Sunil Pannalal Banthia & Ors. vs. CIDCO & Anr.*²;
- (d) CIDCO had a reciprocal obligation to provide the plots encroachment free. Having failed in its reciprocal obligation, CIDCO is not entitled to claim DPC or further interest;
- (e) Without prejudice to the contention that no amount was payable, even assuming any DPC was payable, the same could be claimed only until payment of the full Lease Premium by 18th December 2008, and no DPC or interest could be claimed thereafter. Towards this end, it is

1 (1969) 3 SCC 445

2 2007(6) SCC 674

contended that any such claim amounts to levying interest on interest.

- (f) In any event, even Resolution No.8840 upon which CIDCO places reliance, is in the context of clause 2 of Regulation 5 of the New Bombay Disposal of Land Regulations, 1975 which contemplates DPC only for delay in payment of Lease Premium and not any further interest.

19. Per contra, the stand of CIDCO as urged by Shri Kulkarni, learned counsel on its behalf, is as under:-

- (a) The Petitioners have failed to make payment as per time limits prescribed in the allotment letters;
- (b) The Petitioners were liable to pay DPC and the State Government had refused to exempt payment of interest as communicated on 17th August 2012;
- (c) The terms of the allotment letters were sacrosanct and had to be complied with; failure to do so justified cancellation of the letters of allotment. Reliance has been placed on a judgment of the Division Bench of this Court in *Shakti Commercial Premises Society Ltd. vs. State of Maharashtra & Ors.*³; and *Malpani Gruh Nirman Private Ltd. V/s. CIDOC & Ors.*⁴.

3 (2012) 5 MHLJ 147

4 Order dated 23.09.2019 in Civil Writ Petition No. 8389 of 2017.

(d) The objection of there being an encroachment is an afterthought; the full sum of DPC plus interest thereon till date was thus payable by the Petitioners.

20. In response to Shri Cama's submissions on waiver and estoppel, Shri Kulkarni contends that there are no pleading to support this submission and that there could be no waiver if the same was contrary to public interest. Reliance is placed in the Additional Written Submissions on certain judgments in this regard.

21. Having heard the learned Counsel for both sides and for the reasons recorded hereafter, we are inclined to allow the Petitions on the terms set out in the operative order below.

22. Shivaji and Kalpana have admittedly made full payment of the Lease Premium amounts by 18th December 2008. CIDCO in its Affidavit in Reply in Shivaji's Petition has categorically stated on oath that despite the first installment having been paid on 15th March 2006, i.e. after the date of 20th February 2006 by which time both installments ought to have been paid, CIDCO took into consideration the payment and called upon the Petitioners to comply with the further terms and conditions of the contract.

23. It is a matter of record that Shivaji and Kalpana duly made payments on the dates set out in the table above and all the said payments were accepted by CIDCO

without any demur, protest, objection or claim for DPC or interest whatsoever at the relevant time. Even if CIDCO's best case is taken qua Shivaji and Kalpana, the first demand for DPC was raised as late as on 20th July 2010 which appears to have forthwith been refuted by Shivaji's letter of 22nd September 2010. We need not for the present delve in the controversy as to whether this demand in writing was received by the Petitioners on 20th July 2010. It is however undisputed that there is no proof of service placed on record by CIDCO of receipt of such a letter.

24. Be that as it may, the main issue remains that CIDCO has admittedly received and duly accepted the full Lease Premium from Shivaji and Kalpana, after the contractual due dates CIDCO raised no objection at the relevant point in time and by its own conduct in receiving the payments after the due dates in the allotment letters, appears to have waived any objection to the alleged delay in making payment.

25. Section 63 of the Indian Contract Act contemplates that a promisee may dispense with or remit wholly or in part the performance made to him or may extend the time for such performance. In the present case, it appears clear that CIDCO, by accepting the delayed payment, has extended the time for performance of the contract by Shivaji and Kalpana. As held by the Supreme Court in *Jagad Bandhu Chatterjee* (supra), this principle of waiver of a contractual obligation recognized under Section 63 of the Indian Contract Act, constitutes a release of the promisors i.e. the

Petitioners, of any liability for the delayed payments, , on account of the actions of the promisee , i.e. CIDCO.

26. As regards the contention that there is no pleading of waiver/estoppel, the pleadings in the Petition and Affidavit in Rejoinder, make it clear that the Petitioners have taken these stands. The conduct of CIDCO referred to above, evidently warrants applicability of the principles of waiver and estoppel.

27. We do not find any substance in CIDCO's contention that there is any element of public interest involved which will override the contractual principle of waiver. As has been repeatedly recognized, including in the judgment of *Sunil Pannalal Banthia* (supra), where incidentally the contesting party was CIDCO, public bodies are as much bound as private individuals in matters of contract and are bound by doctrines such as estoppel, etc. The present Petitions do not involve any larger issue of public interest; they simply involve CIDCO having waived certain contractual dates by accepting payment after these dates, without raising any objection or claim for DPC or interest. Thus, the judgments relied upon by CIDCO in this regard will have no application.

28. We also find substance in the submission made on behalf of the Petitioners that CIDCO represented to them, by their actions, that CIDCO was willing to accept the delayed payments, without levy of DPC or interest. The Petitioners may well have

altered their decision to make further payments if it was made known to them that substantial sums would be claimed by way of DPC/interest from the Petitioners. Indeed, as set out above, no contemporaneous claim or objection was raised by CIDCO, as per CIDCO's own best case, for over a year and a half after the last payment was received from Shivaji and Kalpana. CIDCO is by its own conduct estopped from all of a sudden waking up one fine day and claiming DPC/interest.

29. Shri Kulkarni sought to contend that a representation had been made to the State Government to exempt payment of interest, but that the same had been refused and this was communicated to the Petitioners on 17th August 2012. Firstly, nothing has been shown by CIDCO to suggest that the order of the State Government was ever served upon the Petitioners; indeed even in the reply filed by CIDCO, the order itself is nowhere annexed. CIDCO relies upon its letter dated 17th August 2012 which it claims was served upon one Mr. Bhosale. The Petitioners have categorically denied in their Rejoinders, ever having any so-called Mr. Bhosale in their employment and deny having received this letter until 2015 when a copy thereof was furnished to them. Be that as it may, for the reasons set out above, we are of the view that it is not open to CIDCO to belatedly claim such DPC and/or interest thereon.

30. The conduct of CIDCO leaves much to be desired. As set out above the Petitioners repeatedly called upon CIDCO to remove the encroachments on the

subject plots between 2006 and 2010. During this period no demand was made for any DPC / interest on Shivaji or Kalpana, and the contention sought to be raised by Shri Kulkarni that the plea of encroachment is an afterthought is itself an argument contrary to the record. It is therefore clear that CIDCO has failed to comply with its reciprocal promise to provide the plots encroachment-free, and has belatedly raised claims on Shivaji and Kalpana for DPC/interest.

31. Having held as above, we would have been justified in allowing the Petition and rejecting CIDCO's contention of DPC being payable at all. However, with a view to balancing the equities and in the light of the submissions made by the Petitioners, as set out in their calculation charts, we are inclined to direct that Shivaji and Kalpana pay interest contemplated in Resolution No. 8840, i.e. 12% p.a. for the first three months of delay and 16% p.a. thereafter until the date of the final payments of Lease Premium made by them on the reducing balance calculation, furnished by the Petitioners, i.e. Shivaji and Kalpana respectively, which calculations are annexed as Annexure 2 to the Petitioners' Written Submissions. We find support and precedent for such a direction in the judgment of the Supreme Court in *Commissioner, Avas Evam Vikas Parishad, Lucknow & Anr. vs. Laxmi Nath Misra & Ors.*⁵ In that case, the Supreme Court was faced with a similar situation where an allotment letter had been cancelled for delay in payment. The High Court had directed payment to be

5 (2011) 15 SCC 517

made by the Petitioners without payment of interest for the delayed period. When the matter reached the Supreme Court, after hearing the parties, the Supreme Court directed that the original Petitioners pay interest until the dates on which the full payments had been made by them of the principal amount in question. Pertinently, the Supreme Court decided this matter in 2011, but interest was levied only until the actual dates of payment of the principal amount, i.e. 2007 and 2008.

32. Applying the principle of the above judgment, in the present Petitions admittedly there is no monetary claim qua Waman and the full payment was made by Shivaji and Kalpana on 18th December 2008. Thus, we feel that it would be appropriate and in line with the judgment of the Supreme Court that the Petitioners i.e. Shivaji and Kalpana be directed to pay DPC/interest as set out above until 18th December 2008 on the reducing balance calculation furnished by them, that is to say in Shivaji's Petition, Shivaji shall pay a sum of Rs.3,97,595/- (Rupees Three Lakhs Ninety Seven Thousand Five Hundred and Ninety Five only) and Kalpana shall pay a sum of Rs.3,26,536/- (Rupees Three Lakhs Twenty Six Thousand Five Hundred and Thirty Six only), to CIDCO.

33. Levy of the above interest and the rates at which it has been computed also appears to be consistent with the aforesaid Clause 2 of Regulation 5 of the New Bombay Disposal of Land Regulations, 1975 read with Resolution No. 8840 relied

upon by CIDCO. The concerned Regulation reads as under:-

“Payment of Premium:

(1) The premium agreed to be paid by the intending Lessee shall be paid in two equal instalments: the first instalment shall be paid within the month from the receipt of acceptance by the Corporation of his proposal and the second instalment shall be paid within two months from such receipt of acceptance.

(2) The Managing Director may in a deserving case, extend either of the foregoing periods on the payment of interest by the Intending lessees at the rate to be approved by the Corporation by a general or specific order:

Provided that the period for the payment of both the instalments of the premium shall not exceed twelve months in all:

Provided further that the period for the payment of the first instalment shall not exceed three months:

Provided further that if there shall be default by the intending Lessee in the payment of first instalment of the premium, the agreement concluded between the Corporation and the Intending Lessee shall stand determined and the earnest money deposited by the intending Lessee shall stand forfeited to the Corporation with at prejudice to the rights of the Corporation to recover compensation for lessee damage, if any, suffered in consequence of such default.”

(emphasis supplied)

34. The Regulation, while not strictly being invoked in this case, appears to clearly contemplate that an extension of time may be granted for payment of premium and the interest stated to be payable is to be paid pending the payment of the premium. This Regulation does not contemplate payment of interest upon interest/DPC after the full

premium has been received. Thus, the intendment of the provision appears clearly to be to levy interest until the principle amount is deposited, which is exactly what we have directed above.

35. Before concluding, we must mention that CIDCO's reliance upon the judgment in *Shakti Commercial Premises* (supra) and *Malpani Gruh Nirman* (supra) is inapposite. The factual matrix therein was entirely different; it pertained to change of user for some purpose other than that specified in the letter of allotment and lease agreement. It is obvious that in ordinary circumstances, the terms of the lease deed or allotment letter will bind parties. However, that does not mean that in a given fact situation such as this the Court is precluded from holding that there has been waiver and/or in holding that CIDCO is precluded from claiming interest on interest or interest contrary to the Regulation as set out above.

36. For the reasons set out above, we are of the view that the action of CIDCO in seeking to levy DPC and interest till date and in cancelling the letters of allotment for non-payment of DPC/interest in the year 2016 cannot be justified and we are accordingly inclined to interfere with the same.

37. It appears from the correspondence and photographs on record, that there are indeed encroachments on the plots, which CIDCO would ordinarily be bound to remove before handing over possession to the Petitioners. However, the Petitioners

have stated in their Written Submissions that without prejudice to their rights and contentions as regards the encroachments on the subject plots, they were willing to accept the plots on an as is where is basis subject to CIDCO complying with its assurance set out in its Affidavit in Reply and Written Submissions, to take all possible steps to assist the Petitioners in removing the encroachments.

38. Accordingly, we pass the following order:-

- (i) The Writ Petitions are allowed and the impugned letters of cancellation dated 13th July 2016 are quashed and set aside;
- (ii) CIDCO shall forthwith, and not later than four weeks from the date of the present order hand over physical possession of the subject plots to the respective Petitioners in each of the above Petitions;
- (iii) Simultaneously with the Petitioners being put in possession of their respective plots, Shivaji shall pay to CIDCO a sum of Rs.3,97,595/- (Rupees Three Lakhs Ninety Seven Thousand Five Hundred and Ninety Five only) and Kalpana shall pay to CIDCO a sum of Rs.3,26,536/- (Rupees Three Lakhs Twenty Six Thousand Five Hundred and Thirty Six only) by Demand Drafts / Pay Orders in full and final payment of any claims that CIDCO may have for DPC/interest in respect of the subject plots;

- (iv) CIDCO shall forthwith and not later than four weeks from today execute the necessary documents such as the Agreement to Lease and any other such document in respect of the subject plots as are necessary to conclude the transactions. It is made clear that the period for the lease shall be computed on the basis that possession is being handed over prospectively under this order, and the lease period shall be construed accordingly;
- (v) CIDCO shall forthwith provide all necessary assistance and take all necessary steps, as permissible and entitled in law, to cause to be removed all / any encroachments on the subject plots in co-ordination and co-operation with the Petitioners;
- (vi) Rule is made absolute in the above terms and the Petitions are accordingly disposed of with no order as to costs.

(MILIND N. JADHAV, J.)

(S.J. KATHAWALLA, J.)