

Prajakta Vartak

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
IN ITS EXTRAORDINARY CIVIL JURISDICTION
AND
IN ITS JURISDICTION UNDER ART.226 OF THE
CONSTITUTION OF INDIA**

WRIT PETITION NO. 1374 OF 2017

M/s.Satra Plaza Premises Co-op.Soc.Ltd., A Co-operative Society Duly incorporated under the provisions of Maharashtra Co-operative Societies Act,1960, having its registered office at “Satra Plaza” Plots Nos.19 & 20, Sector – 19-D, Vashi, Navi Mumbai-400 703.	.. Petitioner
Vs.	
1. Navi Mumbai Municipal Corporation, duly constituted under Section 5 of Maharashtra Provincial Municipal Corporation Act,1949, having their Office at Plot No.1 Near Killegaothan, Palm Beach Junction, Section – 15A, Belapur, Navi Mumbai. 2. Municipal Commissioner, Navi Mumbai Municipal Corporation, having his Office at Plot No.1 Near Killegaothan, Palm Beach Junction, Sector – 15A, Belapur, Navi Mumbai. 3. M/s.Satra Properties (India)Ltd., a company duly incorporated under the provisions of the Companies Act,1956, having their registered office at Dev Plaza, 2nd Floor, Opp.Andheri Fire Brigade, S. V. Road, Andheri (W), Mumbai-400058. 4. State of Maharashtra, Mantralaya, Mumbai – 400032.	

5. City and Industrial Development Corporation of Maharashtra Ltd., A govt. Company duly incorporated under provisions of the Companies Act, 1956 having its Administrative Office at CIDCO Bhavan, CBD-Belapur, Navi Mumbai-400614.	...Respondents
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**WITH
WRIT PETITION NO. 1184 OF 2017**

M/s. Satra Properties (India) Ltd., Dev Plaza, 2 nd floor, Opposite Andheri Fire Station, S. V. Road, Andheri (West), Mumbai-400058.	.. Petitioner
Vs.	
1. Navi Mumbai Municipal Corporation, through Hon'ble Municipal Commissioner, Head Quarter, Plot No.1 Near Kille Gaothan, Palmbeach Junction, Section 15A, C.B.D.road, Belapur, Navi Mumbai, Pin:400614. 2. City and Industrial Development Corporation of Maharashtra Ltd., Nirmal, 2 nd Floor, Nariman Point, Mumbai-400021.	...Respondents

Mr. Atul Rajadhyaksha, Senior Advocate with Mr. Nishant Tripathi i/b. M/s. M. Tripathi & Co. for Petitioner in WP No.1374/17.

Mr. Deep Dighe i/b. Mr. Amit Tungare for Petitioner in WP No. 1184/17.
Mr. Tejesh Dande with Mr. Bharat Gadhavi for NMMC, Respondent Nos. 1 & 2 in WP No. 1374/17 and for Respondent No.1 in WP No. 1184/17.

Mr. Ashutosh Kulkarni with Mr. Sarthak Diwan for CIDCO, Respondent No.5 in WP No. 1374/17 and for Respondent No.2 in WP No. 1184/17.
Mr. A.A. Alaspurkar, AGP for State, Respondent No.4 in WP No. 1374/17.

<u>CORAM :</u>	G. S. KULKARNI & KAMAL KHATA, JJ.
RESERVED ON:	APRIL 24, 2023
PRONOUNCED ON:	MAY 4, 2023

JUDGMENT (Per G.S. Kulkarni, J.):

1. The petitioner is a co-operative society registered under the provisions of Maharashtra Co-operative Societies Act, 1960 and pursuant to the mandate of the first proviso to Section 10 of Maharashtra Ownership of Flats (Regulation of the Promotion, Construction, Sale, Management & Transfer) Act, 1963 by the purchasers of offices/shops in the building constructed by respondent no.3 - M/s. Satra Properties (India) Ltd., the developers. The land on which the petitioner's premises are constructed is described to be Plot Nos. 19 and 20, Sector – 19-D, Vashi, Navi Mumbai – 400 703.

2. The petitioner impugns an order dated 27 December, 2016 passed by the Municipal Commissioner (Respondent No. 2) of respondent No.1 - Navi Mumbai Municipal Corporation (for short “**municipal corporation**”) whereby in exercise of powers vested with the Planning Authority, the municipal corporation has revoked/cancelled not only the

Occupancy Certificate dated 09 February, 2012 issued to the premises of the petitioner, but also the revised Commencement Certificate.

3. The question which arises for consideration in the present proceeding is whether in the facts of the present case the Municipal Commissioner at all had any power to revoke the Occupation Certificate granted to the petitioner's premises.

4. Shortly stated the facts are:-

Respondent No. 5-City And Industrial Development Corporation of Maharashtra Ltd. (for short, "**CIDCO**") had constructed two buildings for offices for the brokers of the Agricultural Produce Market Committee (for short "**APMC**") on the land in question prior to the year 2000. CIDCO allotted both, the buildings along with Plot No.19 and adjacent vacant Plot No.20, namely the lands in question to the municipal corporation for its use as its Head Office.

5. The municipal corporation subsequently discovered that the two buildings constructed on Plot No. 19 were not suitable for its office use.

The municipal corporation invited tenders in the year 2005 for the sale of two office buildings along with the composite plot. In pursuance of the tender/scheme floated by the municipal corporation, various aspirants submitted their offers. One M/s. Om Housing Company Pvt. Ltd. (for short, “**Om Housing**”) turned out to be the highest tenderer. Consequently, the municipal corporation issued to Om Housing a letter of acceptance dated 02 July, 2005. Since Om Housing needed finance from banks/financial institutions, by its letter dated 10 August, 2015, Om Housing requested the municipal corporation to execute “Agreement to Lease” in its favour. The municipal corporation consequently executed Agreement to Lease dated 18 August, 2005 agreeing to lease these composite plots in favour of the Om Housing, on the terms and conditions as set out therein.

6. The municipal corporation thereafter, by its letter dated 02 February, 2006 applied to CIDCO for permission to transfer and assign its leasehold rights of the composite plot in favour of Om Housing. CIDCO by its letter dated 24 February, 2006, requested the municipal

corporation to pay additional lease premium *vis-a-vis* for the grant of additional FSI and amalgamation of the two plots. The municipal corporation made the payment of Rs.14,78,10,000/- towards the additional lease premium for the grant of additional FSI and amalgamation of two plots to CIDCO. Upon the payment of such additional lease premium, CIDCO by its letters dated 27 October, 2006 granted permission for the utilisation of the additional FSI as also for the amalgamation of the two plots on the terms and conditions as set out therein. CIDCO thereafter by its two letters both dated 21 December, 2006 allowed the municipal corporation to transfer and assign its leasehold rights *vis-a-vis* Plot No.19 and the two buildings standing thereon as well as Plot No. 20 in favour of the Om Housing.

7. Pursuant to the permission from CIDCO dated 21 December, 2006, the municipal corporation executed a Deed of Assignment dated 21 December, 2006 in favour of the Om Housing.

8. Thereafter in pursuance of the approval of the CIDCO dated 21

December, 2006 to transfer and assign its leasehold rights in respect of both the said plots, a tripartite agreement dated 28 December, 2006 was executed between the CIDCO, the municipal corporation and Om Housing. Accordingly, under such agreement the said plots stood vested in Om Housing.

9. Thereafter, Om Housing submitted a scheme of amalgamation with respondent no.3-M/s. Satra Properties (India) Ltd. (for short “**Satra Properties**”) then known as “Express Leasing Ltd.” under Sections 391 and 394 of the Companies Act, 1956, subject matter of Company Petition No. 45 of 2007 filed in this Court. Such petition was allowed by this Court by an order dated 16 April, 2007. Om Housing thus stood amalgamated with Satra Properties. Consequently all the assets and liabilities of Om Housing stood vested with Satra Properties. Further CIDCO by its letter dated 27 March, 2008 acknowledged the amalgamation of Om Housing with Satra Properties.

10. Consequent to the amalgamation, Satra Properties was seized,

possessed and was sufficiently entitled to Plot No.19 along with two existing buildings standing thereon and Plot No.20. CIDCO by its letter dated 24 February, 2006, granted consent/ permission for the amalgamation of Plot No.19 with Plot No.20 and for the utilization of additional FSI pursuant to the payment of costs and charges. Satra Properties accordingly became entitled to develop the composite plot and carry out building operations thereon with development permission to be granted by the municipal corporation.

11. Upon acquiring the right, title and interest vis-a-vis the composite plot, with the permission of the municipal corporation, Satra Properties demolished both the office buildings standing on Plot No.19 and applied for development permission on the composite plot as per the provisions of Section 44 of the Maharashtra Regional and Town Planning Act (for short, “**MRTP Act**”) read with Regulation 4 of General Development Control Regulations for Navi Mumbai Municipal Corporation, 1994 (for short, “**the GDCR**”).

12. The municipal corporation by its letter dated 07 March, 2007 granted development permission to Satra Properties and issued Commencement Certificate as also approved plans for the construction of a commercial building consisting of two levels of basement for parking and storage and ground plus thirteen upper floors. Satra Properties accordingly obtained permissions as also had got the revised plan sanctioned by the municipal corporation. It also sold various shops and offices in the building being constructed by it on the said plots and executed Agreements for Sale in favour of several persons who agreed to acquire shops/offices in the said project.

13. Satra Properties having completed the construction on the composite plot, made an application to the municipal corporation for issuance of an Occupancy Certificate as per the requirements of the regulations. After following the procedure, the municipal corporation granted an Occupancy Certificate dated 09 February, 2012 not in accordance with Form No.19 as Form No.19 does not contemplate any condition attached to it. The Occupancy Certificate dated 09 February,

2012 which reads thus:-

“NAVI MUMBAI MUNICIPAL CORPORATION
1st Floor, Belapur Bhavan, C.B.D., Navi Mumbai – 400 614.
Tele. Nos. 27577070, 27575700
Fax No. 27573785

 Outward No. TPD/O.C./M. No. B-6704 /714/2012.
 Date: 09.02.2012.

OCCUPANCY CERTIFICATE

- Read:
- 1) Revised Certificate for Commencement of Construction bearing No. N.M.M.C./T.P.D./B.P./M. No. A-8151/3450/2009, dated 04.09.2009, issued by Navi Mumbai Municipal Corporation.
 - 2) Circular dated 31.07.2008 about charging of Premium issued by Navi Mumbai Municipal Corporation.
 - 3) Certificate regarding Completion of Construction, dated 30.03.2011 produced by the Architect- M/s. Hiten Sethi.
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The owner by name M/s. Satra Properties (India) Limited of the land bearing Plots of land No. 19 and 20, situated in Sector No. 19-D, Vashi, Navi Mumbai in Navi Mumbai has completed the construction on the said plot of land on the date 23.02.2011. The Certificate in respect thereof has been submitted by the concerned Architect M/s. Hiten Sethi. As the terms and conditions, as mentioned in the Revised Certificate for Commencement of Construction dated 04.09.2009 issued by the Navi Mumbai Municipal Corporation, have been complied with and also the action about recovery of various fees pursuant to the Circular dated 31.07.2008 about charging Premium, issued by the Municipal Corporation has been carried out, permission is granted to make use of the said plot of land as follows:

- | | | |
|--|---|---------------------|
| 1) Area of the plot of land | : | 19238.51 Sq. Mtrs. |
| 2) Permissible Floor Space Index | : | 1.50 |
| 3) Built-up Area under Commercial use : | | 28751.840 Sq. Mtrs. |
| (Shops – 59, Offices – 329, Banquet Halls – 02 under commercial use) | | |
| 4) Built-up Area under Balcony | : | 4799.44 Sq. Mtrs. |

(Sd/-)
[Sanjay S. Banait],
Assistant Director, Town Planning,
Navi Mumbai Municipal Corporation.”

14. On the same day, a covering letter dated 09 February, 2012 was addressed to Satra Properties inter-alia setting out conditions in respect of the Occupancy Certificate and, more particularly condition no.4 stating that it would be binding to produce ‘No Objection Certificate’ issued by the CIDCO within one year, otherwise occupancy would be cancelled. The said letter is addressed by the Assistant Director of Town Planning, Navi Mumbai Municipal Corporation to Satra Properties which reads thus:-

“NAVI MUMBAI MUNICIPAL CORPORATION
1st Floor, Belapur Bhavan, C.B.D., Navi Mumbai 400614
Tel.No. 27577070, 27575700, Fax 27573785

Outward No. T.P.D./O.C./M.No. B-6704/714/2012
Date : 09.02.2012

To,
M/s. Satra Properties (India) Ltd.
Plot No. 19 and 20, Sector 19 D,
Vashi, Navi Mumbai.

File No. N.M.M.C./S.M.No.....Matter No. B-6704

Subject :- Regarding issuing Occupancy Certificate in respect of the property bearing Plot No. 19 and 20, Sector 19 D, Vashi, Navi Mumbai.

Reference :- Applications dated 30.03.2011 and 11.09.2011 of your Architect.

Respected Sir,

In pursuance of the applications referred to hereinabove, the Occupancy Certificate for commercial use of the property bearing Plot No. 19 and 20, Sector 19 D, Vashi, Navi Mumbai, is enclosed herewith.

As internal changes have been made without permission, the amount of Security Deposit has been forfeited, as per the condition mentioned in the Construction Commencement Certificate, which may please be noted.

As per the Government Circular No. BCA 2007/M.No. 788/Labour 7-A, dated 26th October, 2009 issued by the Industry, Energy and Labour Department, Labour Cess has been paid in this matter and the Labour Welfare Cess Unique Code No. 20110200403 B-6704 01 has been given thereto.

Conditions:- 1) Appropriate precaution should be taken from time to time to permanently maintain the markings showing the entire Parking Arrangement within the boundary of the said building, as shown in the sanctioned plan.

2) Precaution should be taken categorically to see that common passages, Lobby, AHU in the said building and the area, free of Floor Space Index, calculated by charging premium as well as other items (area) taken free of Floor Space Index, is not misused or is not used unauthorizedly.

3) As the Palm Beach Road is passing adjacent to the said Plot, the access for the vehicles to the said plot should not be given from Palm Beach Road. Similarly, precaution should be taken to see that no hindrance is caused to the traffic on Palm Beach road.

4) **It shall be binding to submit No-Objection Certificate issued by the Office of CIDCO, within one year or else, this Occupancy Certificate shall be cancelled.**

Copy for information -

1) Hiten Sethi, Architect,

'Meher', ground floor, Plot No.260, Sector 28,
Vashi, Navi Mumbai.

2) Deputy Commissioner (Cess),
Koparkhairane.

3) Deputy Commissioner, Zone 1/2, N.M.M.C..

4) Assessor and Collector, N.M.M.C., Turbhe.

5) Chief Architect and Planner, CIDCO Ltd..

6) Ward Officer, N.M.M.C., Turbhe."

Yours faithfully,

Sd/-

(Sanjay S. Banait)

Assistant Director, Town Planning,

(emphasis supplied)

On 8 December 2012 Satra Properties sought a 'No Dues Certificate' from CIDCO. In such letter addressed by Satra Properties, it was recorded that CIDCO had not replied to the earlier letters of Satra Properties dated 22 November 2010, 30 December 2010 and 9 March 2011, requesting for a 'No Due Certificate'. On 3 January 2013, for the first time, CIDCO responded to the said letters addressed by Satra Properties *inter alia* stating that Satra Properties would have to bear for some time for a "No Dues Certificate", as CIDCO was to *inter alia* obtain compliance from the municipal corporation in regard to the lease of the said plots, incidental to the grant of change of usage of the land and enhanced FSI.

15. The petitioner has contended that the Municipal Corporation was insisting on "No Dues Certificate" to be obtained by Satra Properties and failing which Satra Properties was threatened to invoke the occupation certificate. This necessitated Satra Properties to address letters to CIDCO to approach the Municipal Corporation and settle the issues.

16. On 15 January 2014 Municipal Corporation issued a show cause

notice to Satra Properties as to why the Occupation Certificate granted by the municipal corporation should not be revoked and called upon Satra Properties for a hearing on 22 January 2014. The petitioner also addressed a letter on 22 January 2014 to the Municipal Commissioner requesting the NMMC that the petitioner be also heard in the matter, as the issue pertains to the cancellation of the occupancy certificate of the premises of the petitioner society.

17. A hearing on the show - cause notice issued by the Municipal Commissioner was scheduled on 22 January 2014, however no notice was issued to the petitioner. On 17 December 2016 which was almost after 2 years of the earlier show - cause notice, a fresh show - cause notice came to be issued to Satra Properties, however, no notice was issued to the petitioner, on 20 December 2016 to participate at the hearing. Petitioner addressed an E-mail to the Municipal Corporation requesting the petitioner's presence at the hearing, to take place on a future date. A copy of such letter was also forwarded to the Additional Commissioner of the Municipal Corporation.

18. On 23 December 2016 a hearing on the show cause notice took place before the Municipal Commissioner, however, no notice of such hearing was issued to the petitioner although an opportunity of the same was sought by the petitioner by its letters as noted above. Consequent to such hearing on 27 December 2016, the Municipal Commissioner passed the impugned order cancelling the Occupancy Certificate as also the revised Commencement Certificate. The said order was also communicated to the members of the petitioner/society. The impugned order cancelling the Occupation Certificate is annexed at Exhibit-N (Page 270 to the Writ Petition). The operative part of the impugned order is required to be noted which reads thus:-

(Official Translation of the Original Marathi Version)

“

ORDER

A) As the Condition No.4 mentioned in the Occupancy Certificate issued to the building standing on the Plot under subject, by the Navi Mumbai Municipal Corporation, under letter dated 09.02.2012, is not complied with, the Occupancy Certificate togetherwith the revised Building Permission, is hereby cancelled.

B) As the Building Permission granted in the matter under subject is cancelled, the said structure becomes illegal/unauthorized one and therefore, the Deputy Commissioner and Controller (Unauthorized Works) as well as the Ward Officer Concerned shall take further legal action.

C) In the matter under subject, as the Developer and also the Architect concerned are responsible, the copy of this Order is sent to the Council of Architects, New Delhi for taking action against him accordingly.

Copy of this order is served upon the Developer M/s. Satra Properties (India) Ltd. and the Architect Shri Hiten Sethi.”

19. In the above circumstances, the present petition has been filed praying for the following reliefs:-

“a) That this Hon’ble Court may be pleased to declare:

(i) That condition no.4 appended to the O. C. dated the 9th February, 2012 requiring the 3rd Respondents to furnish the NOC of the 5th Respondents was/is ultra-vires the provisions of the MRTP Act, MPMC Act and the GDRC (particularly Reg. 9.8 of the GDRC) and hence liable to be quashed and set aside; and

(ii) That the 1st / 2nd Respondents have no jurisdiction in law to cancel/revoke the O.C. dated 9th February, 2012 (Exh. “H”); and

(iii) That the 1st / 2nd Respondents have no jurisdiction to issue notices at Exhs - “O” to “O-104” and the identical notices to the other members of the Petitioners under S. 53(1) of the MRTP Act as they have done; and

(iv) That the O.C. dated 9th February, 2012 (Exh - “H”) is irrevocable; and

(v) That the order dated 27th December, 2016 (Exh - “N”) is bad in law, untenable and liable to be quashed and set aside; and

(vi) That the notices at Exhs - “O” to “O-104” and other identical notices to the other members of the Petitioners issued without having jurisdiction to do so are also bad in law and liable to be quashed and set aside.

(b) That this Hon’ble Court may be pleased to issue writ of

certiorari or a writ in the nature of certiorari or any other writ, order or direction of this Hon'ble Court calling for the records of the proceedings conducted by the 1st / 2nd Respondents u/s. 51(1) of the MRTTP Act in which the impugned order dated 27th December, 2016 was passed and after scrutinising, quash and set aside the same.

(c) That this Hon'ble Court may be pleased to issue writ of mandamus or writ in the nature of mandamus or any other writ, order and direction directing the 1st / 2nd Respondents to withdraw the notices at Exhs - "O" to "O-104" and all other identical notices issued to the other members of the Petitioners or in the alternative this Hon'ble Court may be pleased to quash/set aside the same.

(d) That pending the hearing and final disposal of this Writ Petition, this Hon'ble Court may be pleased to restrain the 1st / 2nd Respondents, their officers, servants and agents from:

(i) implementing, operating and executing the impugned order dated 27th December, 2016 (Exh - "N") and/or in any manner interfering with and/or disturbing the peaceful possession and use and enjoyment of the building known as 'Satra Plaza' standing on Plot No. 19/20, Sector - 19-D, Vashi, Navi Mumbai by the Petitioners and/or their members.

(ii) implementing, operating and executing the notices at Exhs - "O" to "O-104" and all other identical notices issued to the other members of the Petitioners and/or in any manner interfering with and/or disturbing the peaceful possession and use and enjoyment of the building known as 'Satra Plaza' and the tenements therein standing on Plot No. 19/20, Sector - 19-D, Vashi, Navi Mumbai by the Petitioners and/or their members.

(e) That this Hon'ble Court may be pleased to grant interim/ad-interim reliefs in terms of Prayer Clauses (d-i) and (d-ii) supra."

20. On behalf of the municipal corporation, a reply affidavit of Mr. Hemant Ramdas Thakur, Assistant Director of Town Planning, Navi Mumbai Municipal Corporation, has been filed stating that a detailed

reply affidavit filed in the companion petition by Satra Properties be considered as an affidavit in the present proceedings. In the municipal corporation's reply affidavit filed in the companion petition, it is contended that the municipal corporation has acted in pursuance of the Government order dated 16 December, 1994 issued under Section 154 of the MRTP Act conferring powers on the municipal corporation as planning authority in respect of the developed nodes. It is stated that the State Government in the said order incorporated that it was mandatory for the municipal corporation to insist upon Satra Properties to obtain 'No Objection Certificate' (in short "**NOC**") from CIDCO before issuing a development permission; and that the municipal corporation should insist on obtaining NOC from CIDCO at the time of issuing an Occupancy Certificate. It is hence stated that the provision for obtaining NOC both at the time of grant of development permission, as well as, at the time of issuance of an occupancy certificate was mandatory by virtue of the said order of the State Government, as CIDCO continued to own most of the lands in the Navi Mumbai Project Area, and was entitled to recover different kinds of charges from the allottees of lands. It is for such

reason the grant of development permission under Section 44 of the MRTP Act was made subject to CIDCO issuing NOC, both at the time of issuance of the Commencement Certificate as well as for grant of an Occupancy Certificate. This is also stated to be the requirement under Regulation 6.3.17 of the DCR of the municipal corporation, necessary for utilisation of additional FSI, change of user, mixed user, amalgamation, redevelopment etc. The affidavit also refers to some file notings which inter-alia included Satra Properties, undertaking that it would be fully responsible for any financial and legal aspects if they arise in the future, and that the municipal corporation would not be held responsible whatsoever. Considering such an undertaking, it was decided to issue Occupancy Certificate on the condition to submit CIDCO's NOC within three months. In this regard, the relevant extract of the reply affidavit is required to be noted which reads thus:-

“..... The said file noting was approved at various levels such as Draughtsman, Dy. Accountant, Dy. Engineer, Town Planner and Asst. Director of Town Planning. After such approval, the concerned file was placed for approval of the Municipal Commissioner who remarked that Occupancy Certificate should be granted as the plot was auctioned by NMMC to the Petitioners as a peculiar case. Accordingly, the then Asst. Director of Town Planning issued the occupancy certificate dated 09/02/2012 in respect of both Plot Nos. 19 and 20 by putting condition therein that NOC of CIDCO must be submitted within 1 year, failing which the Occupancy Certificate

shall stand cancelled. Thus as against the period of 3 months proposed in the file nothing approved till the level of Commissioner, it is not clear as to why period of 1 year was stipulated in the Occupancy Certificate dated 09/02/2012. Furthermore there is no provision for processing proposal for Occupancy Certificate merely on the basis of an undertaking of the developer. Similarly there is no provision for issuance of conditional Occupancy Certificate.”

21. The said affidavit further states that the objective behind making a provision for mandatorily obtaining NOC from the CIDCO for grant of Occupancy Certificate, is to ensure that CIDCO recovers various charges from the allottees. It is stated that in the present case, on account of non-completion of construction by the petitioner within the time limit, Satra Properties became liable to pay charges to CIDCO for condonation of delay, and Satra Properties wanted to avoid the liability to pay such charges to the CIDCO. It is further stated that Satra Properties ought to have complied with its undertaking to make payment of the CIDCO charges. The affidavit also refers to a correspondence in the peculiar facts of the case, in as much as, the plots in question placed at the disposal of the municipal corporation. In these circumstances, municipal corporation addressed a letter dated 04 November, 2016 to the Chairman and Managing Director of the CIDCO requesting for the decision on the no

dues certificate. In such letter, it was pointed out by the Municipal Commissioner that CIDCO had sought time vide letter dated 03 January, 2013 for issuance of no dues certificate, but no further decision from the CIDCO was received thereof. It is stated that the Manager (Town Services), CIDCO responded to the said letter of the Municipal Commissioner by his letter dated 25 November, 2016 stating that the matter was placed before the Board of the CIDCO on 28 August, 2013 and the Board sought clarification of various issues pertaining to the legality of sale of plot to NMMC, grant of permission to transfer, change of user etc. and it is for such reason, it was communicated that 'No Dues Certificate' cannot be granted to Satra Properties in respect of Plot No. 19 and 20. It is stated that on such backdrop, the Assistant Director of Town Planning had issued a show cause notice dated 17 December, 2016 to Satra Properties and to its Architect with a copy thereof to CIDCO and invited them for the hearing scheduled on 23 December, 2016. Further that during such hearing, Satra Properties had requested for further extension of time for submission of CIDCO's NOC. It is stated that after hearing the parties, the Municipal Commissioner passed the impugned

order dated 27 December, 2016 revoking the revised development permission as well as Occupancy Certificate. It is stated that the Municipal Commissioner was accordingly entitled to revoke the permission as per the provisions of Section 258 of the Maharashtra Municipal Corporations Act as well as DCPR Regulation 8.6. It is accordingly prayed that the petition be dismissed.

22. This petition was first heard on 02 February, 2017 when a co-ordinate bench of this Court while issuing notice to the respondents had directed that no coercive steps be taken against the members of the petitioner in pursuance of the impugned order. The said order has continued to operate till date. It may also be stated that a co-ordinate bench of this Court on 05 September, 2022, had passed the following order:-

“1. Heard the learned Counsel for CIDCO. Learned Counsel for CIDCO tendered Minutes of Meeting dated 6.4.2021 and submitted that pursuant to order dated 30.3.2021, passed by this Court, a meeting was held on 6.4.2021. He further submitted that, in the said meeting, the Navi Mumbai Municipal Corporation and CIDCO concluded that in view of the Completion Certificate of the Architect, Occupancy Certificate was issued by the Navi Mumbai Municipal Corporation on 9.2.2012 and the present status that the occupants are using the constructed premises, that all these facts will be brought to the notice of the Board and the issue of validity of the

Occupancy Certificate issued by Navi Mumbai Municipal Corporation on 9.2.2012, will be submitted for suitable consideration of the Board. The decision of the Board will be communicated to the Hon'ble High Court. Learned Counsel for CIDCO further submitted that the next meeting of the Board is likely to be held shortly.

2. Learned Counsel seeks time to inform this Court about the next date of the meeting, on which appropriate decision will be taken on the issue of validity of the Occupancy Certificate issued by Navi Mumbai Municipal Corporation on 9.2.2012.

3. Place the matter under the caption 'directions' on supplementary board on 14.9.2022.

4. It is made clear that no further adjournment will be granted."

23. Lastly, this Court on 21 April, 2023, noting the peculiar facts of the case, passed the following order calling upon the NMMC to take an appropriate decision:-

"1. We have heard Mr. Rajadhyaksha, learned Senior Counsel for the Petitioner and Mr. Dande, learned counsel for the NMMC and Mr. Kulkarni, learned Counsel for CIDCO for some time.

2. We have discussed the issues as falling for consideration of the Court. Mr. Dande, Learned counsel for the NMMC considering the complexion of case fairly states that he would take instructions from his clients as to whether the issues could be resolved. The controversy in the present proceedings is quite peculiar. In our opinion, this is a fit case where an appropriate decision to reconsider the impugned order passed by the Municipal Commissioner of NMMC needs to be taken. Prima facie we are of the opinion that serious prejudice has been caused to the petitioner by the impugned order which is of a nature that by a stroke of the pen the occupation certificate as well as C.C. have been cancelled, seriously affecting legal and constitutional rights of the Petitioners, who are the occupants of the premises. It was condition relevant to the developer in regard to any recovery at the hands of CIDCO, which could not affect the occupants of the

completed building, in respect of which occupation certificate as also completion certificate was granted. Such order passed by the Municipal Corporation had a direct bearing on the rights of the occupants guaranteed under Article 300 (A) of the Constitution, apart from the rights which an occupancy certificate would confer under the provisions of the MRTP Act. We are also disturbed by the fact that the impugned order has been passed in breach of the basic requirement of law not being followed, namely that the Petitioners not being heard in compliance of the principles of natural justice, when the Municipal Commissioner who has passed the impugned order was aware that the building was occupied by third parties and any such order passed by him would adversely affect the third parties like the petitioners. This is the complexion of the proceedings.

3. We leave it to the Municipal Commissioner to take appropriate decision and inform the said decision to the court failing which we would be constrained to adjudicate the petition on merits after hearing all the parties.

4. Accordingly Stand over to 24th April, 2023 at 3 p.m. part heard.

5. If at all appropriate decision is taken, we keep open all contentions of the CIDCO to take appropriate action in accordance with law in regard to recovery of its dues in respect of plot of land in question. We are also informed that there are number of other similar plots in which this issue is being discussed between CIDCO and the NMMC, by the committee as appointed by the State Government by Government Resolution dated 27th October, 2022 and the extension to which, is granted by the subsequent Government Resolution dated 8th February, 2023, a copy of which is placed on record.

6. Parties to act on the authenticated copy of this order.”

Submissions on behalf of the Petitioner

24. Mr. Rajadhyaksha, learned senior counsel for the petitioner, has made the following submissions: -

(i) The impugned order cancelling the Occupancy Certificate and the revised Commencement Certificate is patently illegal and a nullity as it is passed without an opportunity of hearing being granted to the petitioner in adherence to the principles of natural justice.

(ii) It is stated that the impugned order is clearly an order which has civil consequences as it has adversely affected the rights of the third parties who are purchasers of the premises and are members of the petitioner-society. It is submitted that there is a serious prejudice which is caused to the members of the petitioner by the impugned order as it could never be contemplated that in respect of a legally constructed building, in which premises are purchased by such third party purchasers, being revoked of its Occupancy Certificate, creating a situation that it would not be possible for the members of the petitioner to deal with their premises. It is submitted that this is directly in violation of the rights of the members of the petitioner guaranteed under Article 19(1)(g) of the

Constitution of India affecting their business and the right to property guaranteed under Article 300A of the Constitution of India apart from being patently arbitrary, unreasonable and in violation of Article 13 of the Constitution.

(iii) It is submitted that such cancellation of Occupancy Certificate for the reasons as set out in the impugned orders falls foul of the provisions of Section 51 of the MRTP Act. In such context, it is submitted that Section 51 provides for inbuilt safeguards. In the present case, there was no reason whatsoever to invoke a power conferred under Section 51 of the MRTP Act, in as much as power under Section 51 of the MRTP Act can be exercised only when the planning authority is of the opinion that the permission may be revoked or modified having regard to the development plan. It is submitted that there is no such reason whatsoever which would justify invocation of Section 51 of the MRTP Act.

(iv) It is submitted that even Section 51 is subject to the observance of the principles of natural justice, which is a condition precedent which has been breached as no hearing was granted to the petitioner before passing the impugned order.

(v) It is submitted that it is well settled that power under Section 51 of the MRTP Act can be used only for the purposes set out in the provision and not for any extraneous purposes and by applying the principles of law that the power is required to be exercised only in the manner as prescribed by the statute or not at all, the impugned order deserves to be set aside.

(vi) It is next submitted that Occupancy Certificate can never be conditional as it has serious consequences, as also such can also never be the interpretation of the development control regulations which are sought to be relied on behalf of the CIDCO. In any event, the CIDCO under New Bombay Disposal Of Land Regulations, 1975 can recover lease premium or any other charges from Satra Properties as provided under Regulation 3. Even otherwise it has a contractual right to recover the same from Satra

Properties, which is also clear from the affidavit filed by the CIDCO referring to the clauses in the Deed of Assignment. A development permission being conditionally issued, would not be a correct position in law, even on the cumulative reading of the said regulations. In support of such contention, reliance is placed on the decisions of (I) *Digambar Sakharam Tambolkar and another v. Pune Municipal Corporation and others*¹, (ii) *Shree Ambica Developers v. State of Maharashtra and others*², (iii) *Mahavir Enterprises and others v. State of Maharashtra and others*³, (iv) *Smt. Subhadrabai D. Gaykar v. Asst. Director of Town Planning Kalyan Municipal Corporation and Ors.*⁴, (v) *Hansa D. Moodaliar v. Pune Municipal Corporation and Ors.*⁵, (vi) *Brajendra Singh Yambem v. UOI and anr.*⁶, (vii) *Kedar Nath Yadav v. State of W.B.*⁷ and (viii) *Tahsildar, Taluk Office, Thanjore and Ors. v. V. G. Thambidurai and anr.*⁸.

1 1987 Mh.L.J. 419
 2 2012(3) Mh. L.J. 640
 3 1990 Mah. L.J. 1015
 4 2004(2) Mh.L.J. 1087
 5 1998(3) Mh.L.J. 10
 6 (2016) 9 SCC 20
 7 (2017) 11 SCC 601
 8 (2017) 12 SCC 642

Submissions on behalf of the Respondents

25. On the other hand, Mr. Dande, learned counsel for the municipal corporation would not dispute that the petitioners were not heard before passing of the impugned order by which the Occupancy Certificate granted to the petitioner's premises was cancelled as also the revised Commencement Certificate. It is submitted that however such action was required to be taken by the municipal corporation in pursuance of the directions of the State Government and the insistence of the CIDCO for recovery of amount due and payable by Satra Properties to the CIDCO in regard to the plots in question. It is submitted that it was an obligation on Satra Properties to make payment of the said amount to the CIDCO. It is submitted that CIDCO, under its regulations and the NOC granted by it to undertake development of the plots in question, was entitled to recover the said amount from Satra Properties. It is next submitted that not only in respect of the plots held by the petitioner, but also in respect of the other plots, issue of amounts due and payable to the CIDCO was also subject matter of consideration before the State Government. In such

regard, discussions have taken place between the CIDCO and the NMMC. It is submitted that under the terms and conditions of the agreement entered between Satra Properties and the NMMC, it was incumbent on Satra Properties to make payment of such amount and for such reason, there cannot be a dispute that amounts are recoverable by CIDCO from Satra Properties. In so far as the applicability of Section 51 of the MRTP Act is concerned, Mr. Dande has made submissions on the purport of Section 51 of the MRTP Act.

26. Mr. Ashutosh Kulkarni, learned counsel for the CIDCO would submit that issuance of Occupancy Certificate and its cancellation are matters purely concerning the municipal corporation. It is submitted that however, CIDCO has its claim to recover the amounts on the said plots and which need to be kept open and the CIDCO ought not to be prejudiced in any manner so that the recovery of the said amounts is in any manner affected. Mr. Kulkarni has drawn our attention to powers of CIDCO as conferred under New Bombay Disposal Of Land Regulations, 1975 and also taking into consideration the provisions of the MRTP Act, whereunder the CIDCO was appointed by the State Government as a

new town development authority, for the Navi Mumbai Project. It is hence, his submission that whatever amounts, which is legitimately due and payable to the CIDCO, CIDCO would be entitled to recover the same as permissible in law. Mr. Kulkarni, therefore, submits that the rights and interest of the CIDCO, to such extent needs to be protected.

27. On the above conspectus, we have heard learned counsel for the parties, as also we have perused the record.

Analysis and Conclusion

28. At the outset, it needs to be stated that on facts, there is no dispute that Satra Properties was allotted the plots in question and that Satra Properties had undertaken the construction in question. The construction was undertaken as per the plans which were approved. The construction was never categorized to be an illegal construction and was in fact, granted an Occupancy Certificate on 09 February, 2012. The consequence of a building receiving Occupancy Certificate needs no elaboration, suffice it to observe that the building in question was

permitted to be legally occupied as also tenements in the building could be purchased and sold by the members of the petitioner to third parties. Thus, the consequence of Occupancy Certificate being granted not only is a consequence relevant to the co-operative society like the petitioner, in which such tenements are situated, but also relevant in so far as the members of the petitioner who have purchased the tenements and who are entitled in law to occupy the same on the assumption, that their occupation by virtue of the Occupancy Certificate granted by the municipal corporation is legal and valid.

29. The power of revocation of an Occupancy Certificate is governed by Section 51 of the MRTP Act. As the impugned order passed by the Municipal Commissioner is in exercise of such powers, such provision is required to be noted which reads thus:-

“51. Power of revocation and modification of permission to development:-

(1) If it appears to a Planning Authority that it is expedient, having regard to the Development plan prepared or under preparation that any permission to develop land granted 1 [or deemed to be granted] under this Act or any other law, should be revoked or modified, the Planning Authority may, after giving the person concerned an opportunity of being heard against such revocation or modification, by order, revoke or modify the permission to such extent as appears to it to be necessary:

Provided that- (a) where the development relates to the carrying out of any building or other operation, no such order shall affect such of the operations as have been previously carried out; or shall be passed after these operations have substantially progressed or have been completed;

(b) where the development relates to a change of use of land, no such order shall be passed at any time after change has taken place.

(2) Where permission is revoked or modified by an order made under sub-section (1) and any owner claims within the time and in the manner prescribed, compensation for the expenditure incurred in carrying out the development in accordance with such permission which has been rendered abortive by the revocation or modification, the Planning Authority shall, after giving the owner reasonable opportunity of being heard by the Town Planning Officer, and after considering his report, assess and offer, subject to the provisions of section 19, such compensation to the owner as it thinks fit.

(3) If the owner does not accept the compensation and gives notice, within such time as may be prescribed, of his refusal to accept, the Planning Authority shall refer the matter for the adjudication of the Court, and the decision of the Court shall be final and be binding on the owner and Planning Authority.”

30. A bare reading of Section 51 of the MRTP Act makes it explicit that the planning authority is required to be satisfied on the following requirements to invoke the powers under Section 51 to revoke the Occupancy Certificate:-

i. If it appears to the Planning Authority that it is expedient, having regard to the “Development Plan” prepared or under preparation that any permission to develop land granted [or deemed to be granted] under the MRTP Act is required to be revoked or modified,

ii. Necessarily such a decision of the Planning Authority is required to be taken in the context of an existing development plan prepared or under preparation, that such a permission to develop is likely to affect such development plans.

iii. A Planning Authority in taking such action is under an obligation to grant an opportunity of being heard to the person concerned against such revocation or modification, before an order is passed to revoke or modify the permission.

31. The proviso below sub-section (1) also has a bearing in as much as where the development relates to the carrying out of any building or other operation, no such order shall affect such of the operations as have been previously carried out; or shall be passed after these operations have substantially progressed or have been completed. Further where the development relates to a change of use of land, no such order shall be passed at any time after a change has taken place.

32. The question is whether the requirements of Section 51 are satisfied in the present case, so as to empower the municipal corporation

to invoke the provisions of Section 51. On a plain reading of the impugned order, it is clear that the Occupancy Certificate has been revoked for breach of condition no.4 of the letter dated 09 February, 2012 issued by the municipal corporation namely that Satra Properties did not produce NOC from CIDCO within one year of the issuance of the Occupancy Certificate. It is clear that the breach of condition no.4 of the Occupancy Certificate, is no ground as Section 51(1) of the MRTP Act would contemplate, so as to authorise or empower the municipal corporation to cancel the Occupancy Certificate. Such reason as assigned by the Municipal Commissioner is nothing to do with development plan or any proposed development plan and hence, on the clear implication of the provisions of Section 51(1), the impugned order cancelling Occupancy Certificate is rendered illegal.

33. This apart, there is a direct breach of provision of sub-section (1) of Section 51 in the Municipal Commissioner passing the impugned order in as much as the petitioner certainly was concerned and in fact seriously prejudiced by any action to be taken by the Municipal Commissioner to revoke the Occupancy Certificate in exercise of the powers under Section

51(1) of the MRTP Act. The Municipal Commissioner proceeded completely on an erroneous premise that it would be Satra Properties alone who was the concerned person who would be required to be given a personal hearing. This was an arbitrary approach of the Municipal Commissioner. He could not have taken a superficial view of the matter, deviating from the requirements of law.

34. As stated by us in the foregoing paragraphs, the grant of the Occupancy Certificate brings about several other legal consequences, concerning third parties who would be adversely affected, if the Occupancy Certificate is to be revoked. The petitioner, who would be directly affected by such decision, was admittedly not heard. Hence the impugned order passed without hearing the petitioner not only falls foul of sub-section (1) of Section 51, but would be required to be held to be *non-est* and illegal being in breach of the principles of natural justice *qua* the petitioner when it brings about civil consequences.

35. The above discussion would lead us to unhesitatingly observe that the Municipal Commissioner in passing the impugned order has

proceeded on a total misinterpretation of the requirement of sub-section (1) of Section 51 on all counts, namely that the issue did not involve anything to do with the development plan or any proposed development plan and that the reason of non-compliance of condition no.4 of the Occupancy Certificate could never be of any consideration to revoke the Occupancy Certificate as granted to the premises of the petitioner.

36. As noted above, the Municipal Commissioner totally overlooked that the reasons as set out in the impugned order of an alleged non-compliance of condition no.4 i.e. non obtaining of NOC from the CIDCO was totally alien and/or extraneous to the applicability of Section 51 in the facts of the present case. In such context, Mr. Rajadhyaksha would be justified in placing reliance on the decisions in *Digambar Sakharam Tambolkar and another vs. Pune Municipal Corporation and others* (*supra*) and *Mahavir Entrapprises and others vs. State of Maharashtra and others*⁹ when he contends that the impugned order has been passed on misapplication of the powers vested with the Municipal Commissioner under Section 51 of the MRTP Act.

9 1990 Mh.L.J. 1015

37. In *Digambar Sakharam Tambolkar and another vs. Pune Municipal Corporation and others* (supra), the Division Bench after noting the said provision, has held that Section 51 which falls under Chapter IV of the MRTP Act, which deals with "Control of Development and Use of Land included in Development Plans". It was observed that there were several inbuilt safeguards in the said provision. It was observed that permission already granted can be revoked under S. 51 only if it appears to the Planning Authority that it is expedient to do so having regard to the Development plan prepared or under preparation. The Court observed that there were sufficient guidelines indicated in the section itself to invoke the said provision. It was also observed that there is a provision for giving opportunity of being heard to the affected party before the permission already granted could be revoked or modified and it is not as if in all cases falling under Section 51 (1) but not falling under the proviso thereto, the permission granted must be revoked and accordingly, upheld the constitutional validity of Section 51. The relevant observations are required to be noted which read thus:-

“This section comes under Chapter IV which deals with "Control of

Development and Use of Land included in Development Plans". There are several inbuilt safeguards in the section as is evident from its plain reading. Permission already granted can be revoked under Section 51 only if it appears to the Planning Authority that it is expedient to do so having regard to the Development plan prepared or under preparation. It is therefore, difficult to accept that no guidelines are indicated in the section. There is provision for giving opportunity of being heard to the affected party before the permission already granted can be revoked or modified. There again it is not as if in all cases falling under Section 51 (1) but not falling under the proviso thereto, the permission granted must be revoked. It can be modified in appropriate cases. Thus, the Planning Authority is vested with the discretion. It can revoke or modify the permission depending upon the circumstances of each case. Sub-section (2) on the other hand provides for compensation in cases where the affected party has to suffer loss for no fault of it. In case the affected party is not satisfied with the amount of compensation granted, there is provision for reference of the disputes for the adjudication of the Court."

38. In *Mahavir Entrprises and others vs. State of Maharashtra and others* (supra), the Court was concerned with the action of the respondent of passing the order impugned in the said proceedings without hearing the petitioners. The Court observed that such action was in breach of the principles of natural justice, which were explicitly recognized by the provisions of sub-section (1) of Section 51. Applying the well - settled principles of law that if the statute provides that the power vested in the authority should be exercised in a particular manner, it cannot be exercised in any other manner (as held in *Hukum Chand Shyam Lal vs.*

Union of India and others, AIR 1976 SC 789) the Court held that the exercise of power by the Planning Authority under section 51 of the Act was subject to the observance of the principles of natural justice being a condition precedent for the exercise of such power and an order which was passed without due observance of the principles of natural justice was an order without jurisdiction and accordingly, the order impugned therein was quashed and set aside.

39. In *Shree Ambica Developers v. State of Maharashtra and others* (supra) a Division Bench of this Court has held that the power conferred by Section 51, can be exercised if the planning authority is of the opinion that the permission must be revoked or modified having regard to a development plan and when no such ground was stated in the order impugned before the Court, an order under Section 51 revoking occupation certificate would be rendered illegal.

40. In *Kohinoor CTNL Infrastructure Company Pvt. Ltd. and another vs. Municipal Corporation of Greater Mumbai*¹⁰, a Division Bench of this

¹⁰ 2013(1) Mh.L.J. 88

Court considering Section 51(1) of the MRTTP Act, observed that this is a provision made in the interest of preserving the sanctity of a development plan and the intent of the provision is to ensure that a development which would impede or be detrimental to the realisation of the purposes of a development plan that is already prepared, or even one that is under preparation should be regulated and this is how sub-section (1) empowered the planning authority to modify or revoke planning permission already granted to develop land. It was observed that the legislature was cognizant of the fact even before a permission is revoked or modified, planning permissions may have been acted upon and works may have commenced and to deal with such cases, the legislature has drawn a balance through the proviso.

41. In our opinion, the position in law empowering the planning authority to invoke Section 51 is absolutely clear as seen from the provisions of sub-section (1) of Section 51. It is only when the objected development is in some manner affecting the development plan invoked or being prepared, which is likely to frustrate the object of the development plan, it is only on such circumstances, the authority and

power under sub-section (1) of Section 51 can be invoked to take steps to revoke the occupation certificate. It is only in these circumstances, the planning authority would assume jurisdiction to initiate such action by following the procedure in law to revoke the occupation certificate and not for any other reason which is alien and not recognised under Section 51 of the MRTP Act. The facts of the present case clearly demonstrate that none of the requirements as sub-section (1) of Section 51 were attracted so as to invoke such powers to cancel the Occupancy Certificate granted to the petitioner's premises. In these circumstances, the impugned order is patently illegal.

42. There is yet another question as to whether it was permissible for the municipal corporation to issue a Conditional Occupancy Certificate in respect of the petitioner's premises. In our opinion, the municipal corporation was not in a position to justify anything either under the MRTP Act or under the DCR framed by CIDCO that it was permissible for the CIDCO to issue a conditional Occupancy Certificate of the nature as issued in the present case. Thus, issuance of a conditional occupancy certificate itself was unjustified.

43. In the light of the above discussion, the petition needs to succeed.

It is accordingly allowed in terms of the following order:-

ORDER

- i. The impugned order dated 27 December, 2016 passed by the Municipal Commissioner of the respondent - Navi Mumbai Municipal Corporation cancelling the Occupancy Certificate and the revised Commencement Certificate is quashed and set aside.
- ii. It is declared that condition no.4 as incorporated in the Occupancy Certificate dated 09 February, 2012 issued in respect of the petitioner's premises is illegal and was incorporated without any authority in law.
- iii. As a consequence of the above orders, the Municipal Corporation is prohibited from initiating any coercive action under the impugned order dated 27 December, 2016 under notices issued under Section 53(1) of the MRTP Act.
- iii. Rule is made absolute in the above terms.
- iv. No costs.

Order in Writ Petition No. 1184 of 2017

44. In view of the above judgment and order passed by us on Writ

Petition No. 1374 of 2017, this petition also needs to succeed. It is allowed in terms of judgment and order passed on the said petition. No costs.

[KAMAL KHATA, J.]

[G. S. KULKARNI, J.]