

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

**INTERIM APPLICATION NO.14302 OF 2023
IN
WRIT PETITION NO.2473 OF 2021**

The City Industrial & Development Corporation of Maharashtra Ltd. .. Applicant.

IN THE MATTER BETWEEN :

Shelton Infrastructure Pvt. Ltd .. Petitioner.

Vs.

The State of Maharashtra & Anr. ... Respondents.

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a/w IA/14300/2023 in WP/2478/2021

a/w IA/14304/2023 in WP/2475/2021

a/w IA/14305/2023 in WP/2476/2021

a/w IA/14301/2023 in WP/2479/2021

a/w IA/14303/2023 in WP/2477/2021

a/w IA/14298/2023 in WP/2474/2021

a/w IA/14299/2023 in WP/1214/2021

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Mr. G.S. Hegde, Sr.Adv. a/w Ms. P.M. Bhansali, for Applicant /CIDCO.

Mr Virag Tulzapurkar, Senior Advocate alw Mr.Ieshan Sinha a/w Mr.Aayesh Gandhi i/b Wadia Ghandy & Co. for Petitioner in WP/ 2473/2021 and WP/2474/2021.

Dr. Milind Sathe, Senior Advocate a/w Mr Yash Momaya a/w Mr Samit Shukla a/w Ms Saloni Shah a/w Ms Sayali Diwadkar i/b DSK Legal for Petitioner in WP/2475/2021.

Mr R.D. Soni a/w Ms. Bhukuka Bajaj i/b Ram & Co. For Petitioner

in WP/2476/2021.

Mr Dinyar Madon, Senior Advocate a/w Mr Sanjay Udeshi a/w Mr Aditya Udeshi a/w Mr Rahul Sanghvi i/b M/s Sanjay Udeshi & Co. For Petitioner in WP/2477/2021.

Mr Mr Sanjay Udeshi a/w Mr Aditya Udeshi a/w Mr Rahul Sanghavi i/b M/s Sanjay Udeshi & Co. For Petitioner in WP/2478/2021 & WP/2479/2021.

Mr Girish Godbole, Senior Advocate a/w Ms. Shivani Samel a/w Mr Aditya P. Shirke for Petitioner in WP/1214/2021.

Ms. M.P. Thakur, AGP for Respondent State.

Mr. Bharat Gadhavi i/b Mr Tejesh Dande for Respondent Navi Mumbai Municipal Corporation.

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**CORAM: G.S.Kulkarni &
R.N.Laddha, JJ.**

DATE : 11 August, 2023.

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P.C.:

These are batch of Interim Applications which are filed by the original respondent i.e. the City Industrial Development Corporation of Maharashtra Limited (for short 'the **CIDCO**') in the above writ petitions, which were disposed of by our Judgment and order dated 3rd May 2023. The prayers in these Interim Applications *inter alia* seek review of the said judgment and order.

The prayers reads thus:

- a. This Hon'ble court be pleased to review the order dated 3.5.2023 and suitably modify the directions directing CIDCO to accept the payment;
- b. This Hon'ble court be pleased to grant liberty to the applicants to cancel the allotment of the petition plots and retender the same;
- c. Pending the hearing and final disposal of this application, the directions to CIDCO, contained in order dated 3.5.2023, to accept the payment be stayed or alternately timelines for making the payment be extended.
- d. Interim & ad-interim relief in terms of prayer (c) above.
- e. Such other and further relief as this Hon'ble court may deem fit and proper;
- f. Cost of the applicant be provided for.”

2. The operative part of the directions as made by this Court in our Judgment and Order dated 3rd May, 2023, in disposing of the said petitions are required to be noted which reads thus:

“40. In the light of the above discussion, we are of the clear opinion that the petitions are required to be allowed. The Writ Petitions are accordingly allowed in terms of following orders:

- (i) CIDCO is directed to accept the amounts of lease premium in two instalments as per the terms and conditions of allotment letters issued to the petitioners, to be paid by the petitioners within ten weeks from

today without insisting on any delayed payment charges or interest, on such installments.

(ii) In the event, the amounts of lease premium as directed in clause (i) above are not deposited by the petitioners with the CIDCO, the CIDCO is permitted to take appropriate action as may be permissible.

(iii) It is declared that the petitioners shall be entitled to develop the plots subject to the terms and conditions of the allotment letter, and as may be permissible in law as per the development permission, which may be issued in favour of the petitioners.”

3. It is thus, seen that by our above directions, the applicant/CIDCO was directed to accept the amount of lease premium from the original petitioners in two instalments as per the terms and conditions of allotment letters issued to the petitioners, to be paid by the petitioners within ten weeks from the date of said order, without insisting on any delayed payment charges or interest, on such installments, for reasons which are discussed in detail, in our judgment and more particularly considering the interim orders which were operating in favour of the Petitioners in the writ petitions, till the disposal of the writ petitions. By virtue of such interim orders passed in the writ petitions the CIDCO was directed not to cancel allotments of

the plots in question as allotted to the petitioners and in the peculiar situation the proceedings stood. Relevant observations as made by the Court in our judgment dated 03.05.2023 are required to be noted which reads thus:

“33. Mr. Hegde is also not correct in asserting the above proposition for the reason that such an argument completely overlooks and militates against the directives of this Court in the interim orders dated 7 May, 2021 and 11 May, 2021 by virtue of which this Court had suspended and/or directed the CIDCO to extend the schedule of payment stipulated in clause G of the Allotment Letters, without levying on the petitioner, any interest or charges or penalty of any nature, monetary or otherwise, and/or forfeiture and/or termination of the Allotment Letter. The interim orders passed by this Court certainly brought about binding legal consequences, namely, that such interim order passed by this Court suspended the schedule of payment stipulated in the allotment letter, also directing the CIDCO not to claim any interest or impose any penalty. Such interim orders passed by this Court were accepted by CIDCO, as the interim orders were never assailed by the CIDCO, and such interim order continued to operate till date.”

34. Also, Mr. Hegde's contention that the petitioners be directed to make payment of interest and/or delayed payment charges is directly in the teeth of the interim orders passed by this Court. By virtue of such orders, CIDCO can neither demand any interest or delayed payment charges nor the CIDCO can terminate the allotments as made in favour of the petitioners. If this is the plain consequence of the interim orders dated 7 May, 2021 and 11 May, 2021 as passed by this Court, we wonder as to how Mr. Hegde can argue a position contrary to such orders, when the interim orders were wholly accepted by the CIDCO. Even for such reason, the contentions as urged on behalf of CIDCO that

the petitioners ought to pay to CIDCO any delayed payment charges and/or interest cannot be accepted.

37. Considering the above observations, it is not the case that the writ petition of the petitioners on reservation of the plots by the NMMC had stood dismissed and in such situation, the petitioners were asserting any advantage from the interim order having suffered a dismissal of the writ petition as in Amarjeet's case. In fact, it is quite contrary that the petitioners have succeeded in their prayers for reservation as noted by us in the foregoing paragraphs. Furthermore, Mr. Hegde is also not contending that the petitioners are taking advantage on a dismissed writ petition.

38. We may also observe that these were appropriate and fit cases for the Managing Director of CIDCO to exercise his authority under Regulation 8 of the New Bombay Disposal of Land Regulations (supra) to issue appropriate directives not to charge any delayed payment charges or interest from the petitioners when the allotment of plots itself was subject matter of protracted litigation."

4. It needs to be observed that, earlier, in these disposed of writ petitions, CIDCO had filed interim applications inter alia praying that CIDCO be granted leave to cancel allotment of plots. However, said applications were not pressed and were accordingly disposed of, which has also been categorically stated by the CIDCO in para 6 of the Application. The averment to that effect reads

thus:

“6. The Applicant submits that this Hon’ble court had passed an interim order in all the petition whereby the payment of the DPC was suspended and applicants were restrained from terminating the agreement. I say that though CIDCO had filed the Interim Application No.1067 of 2021 for seeking leave to cancel the allotment, however, the same was not pressed in view of the main petition itself being taken up for final hearing.”

5. This apart, after disposal of the writ petitions, the CIDCO had moved interim applications in these petitions. The applications were dated 6.7.2023 which inter alia contended that a decision was taken by the CIDCO to approach the Supreme Court to assail the Judgment and Order dated 3.05.2023, and for such reason timelines as ordered by this Court in its Judgment dated 3.5.2023 for payment to be made by the petitioners, be extended further for a period of 12 weeks. The averments in that regard as made in the said application are required to be noted which reads thus:

7. That the said process consumed some-time and ultimately on 27.6.2023 again a meeting was held between the counsel, advocate, Managing Director, Joint Managing Director, legal advisor and others officials. that in the said meeting various aspects of the matter, including the huge

loss to be caused to the applicants was discussed and the Advocate/Counsel appearing in the matter were asked to give a write up concerning the matter. That ultimately the applicants have decided to challenge the said order dated 03.05.2023 in the Hon'ble Supreme Court.

8. That the Hon'ble Supreme Court was also closed for vacation till 02.07.2023. That since now a decision has been taken to approach the Hon'ble Supreme Court, therefore it is prayed that timelines fixed by this Hon'ble court for accepting the installments be extended by 12 weeks and the impugned order be stayed.

9. It is therefore prayed:

- a. That the timelines stipulated by this Hon'ble court vide order dated 03.05.2023 passed in present writ petition, for affecting the payment of installments be extended by a period of 12 weeks or for such other period as this Hon'ble court may deem fit and proper;
- b. That the order dated 03.05.2023 passed in present writ petition, be stayed for a period of 12 weeks or for such other period as this Hon'ble court may deem fit and proper;
- c. Interim & ad-interim relief in terms of prayer (a) and (b) above.
- d. Such other and further relief as this Hon'ble court may deem fit and proper;
- e. Cost of the applicant be provided for.

6. Such applications came to be heard by the coordinate Bench

of this Court on 12.7.2023. By an order of the even date, after the applications were heard for some time, the applications, were permitted to be withdrawn with liberty to move the interim applications before same Bench. On such backdrop the present applications are filed *inter alia* praying for review of the Judgment and order dated 03.05.2023.

7. In support of above prayers some of the relevant averments made in the applications are required to be noted, which reads thus;

“14. The Applicant submits that the order dated 3.5.2023, was passed on the last working day prior to the summer vacation and during the summer vacation, the Id.Counsel/advocates were not available for discussing the matter with the applicant's officials that it was only on 31st May 2023, that detailed discussion took place between the advocate, legal advisor and the managing director of the applicant and some tentative decisions were taken concerning the said orders. That however on 04.06.2023 the Managing Director of applicant was transferred and incumbent Managing Director had to undertake the rigmarole of again studying and understanding the subject matter of the petitions.

15. That the said process consumed some time and ultimately on 27.6.2023 again a meeting was held between the counsel, advocate, Managing Director, Joint Managing Director, legal advisor and other officials. that in the said meeting various aspects of the matter, including the huge loss to be caused to the applicants was

discussed. That initially the applicants had decided to challenge the said order dated 3.5.2023 in the Hon'ble Supreme Court and accordingly, interim applications were filed in all 8 petitions, which applications came to be disposed off as withdrawn with liberty, vide order dated 12.7.2023. Hereto annexed and marked as Exhibit A is the copy of the said order dated 12.7.2023. The applicants have now taken an informed and conscious decision to avoid loss being caused to the public exchequer and hence the Applicants may be permitted to cancel the allotment of the plots as mentioned herein above."

8. We have heard Mr. Hegde, learned Senior Counsel for CIDCO and learned Sr. Counsel for the original Petitioners. We have also perused the averments as made in the memo of these Interim Applications.

9. At the outset, we may observe that the present applications filed in the nature of review proceedings appear to be patent abuse of process of the Court apart from being mischievous. We record our reasons.

10. It appears that CIDCO has been taking different stands before this Court on different occasions. As noted above, earlier it

filed applications in the writ petitions praying for cancellation of the allotments. Such applications were not pressed and were disposed of. The disposal of the said applications stood merged in our final orders on the writ petitions namely the judgment and order dated 3rd May, 2023 under review.

11. Thereafter, the CIDCO represented before this Court in the earlier interim applications that it had intended to challenge the Judgment and Order dated 3rd May 2023 before the Supreme Court. It appears from the averments as made in paragraph 15 of the present interim application that merely because a new Managing Director came to be appointed on 4.6.2023, now a decision is taken as per the averments in paragraphs no.14 and 15 to cancel the allotments for reasons which infact formed part of the consideration and contention of the CIDCO. Such contentions in fact are in the nature of grounds to assail our Judgment and order dated 3.5.2023 as noted above, which can only be grounds in an appeal.

12. Further, *ex-facie* from the averments as made in the memo of applications to which a reference has been made by us as above, as also from the substantive prayers as made in the present interim applications, it is clear that the contentions as raised are certainly not in the nature of a review of our Judgment and Order. Thus, the learned Counsel for the petitioners, in our opinion, would be correct when they vehemently contend that present applications are mischievous applications and are far away from the parameters of any consideration the law would mandate this Court to exercise the review jurisdiction. There is no error apparent on the face of our order.

13. We, thus, find no merit in these applications, hence, the same are rejected. We, however, refrain from imposing any costs.

14. At this stage, learned Senior Counsel Mr. Hegde, contends that prayers made in the applications be treated as application seeking clarification. Having regard to what is discussed above, we

refrain ourselves from issuing any clarification.

15. Dismissed.

[R.N.Laddha, J.]

[G.S.Kulkarni, J.]