

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

PUBLIC INTEREST LITIGATION NO. 141 OF 2010

BASAVRAJ
GURAPPA
PATIL

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BASAVRAJ
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- 1 Shri Girish Ganpatrao Shirwadkar
Age 45 years,
Adult Indian Inhabitant,
Residing at N 1/A/14, Shivaji Chowk,
CIDCO, Nashik
- 2 Shri Mahesh Dattatraya Deshmukh
Adult Indian Inhabitant,
Residing at N/52-SF1/8/2
Uttam Nagar, CIDCO, Nashik
- 3 Prakesh Manohar Tidke
Adult Indian Inhabitant,
Residing at Flat No.14,
Ashwaryi Park Gangapur Rd,
Pumping Station Nashik

..... Petitioners

Versus

- 1 CIDCO Ltd.
A company registered under
the Provisions of the Companies
Act, 1956 and having its
registered office at Nirmal,
2nd Floor, Nariman Point,
Mumbai – 400021
- 2 Administrator CIDCO
Having Office at Mumbai Agra
Highway, Nashik
- 3 The State of Maharashtra
Urban Development Department,
Government of Maharashtra,
Mantralaya, Mumbai – 32
Through the Secretary

- 4 Raju Purshottam Shimpi
(Deceased)
- 4(a) Vaishali Raju Shimpi
Shop No 1 Shopping Center,
Survey No 973/2, Near Bhamre
Hotel, Old CIDCO,
Nashik 422009.
- 5 Rahul Shankarrao Bhadane,
Shop No. 2,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 6 Prabhavati Vittalrao Saskar,
Shop No. 3,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 7 Anis Kutbhuddin Shaik,
Shop No. 4,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 8 Vijay Tarachand Bedmutha,
Shop No. 5,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 9 Lata Vijay Bedmutha,
Shop No. 6,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 10 Radhakishan Vaswani,
Shop No. 7,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.

- 11 Dilip Vasantao Kotawar,,
Shop No. 8,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 12 Hakim Jakiuddin Khandwala,
Shop No. 9,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 13 Shabbir Jakiuddin Khandwala,
Shop No. 10,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 14 Pritam Bhikchand Bedmutha,,
Shop No. 11,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 15 Anial Jagannath Bhamre,
Shop No. 12,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 16 Eustees Desuza',
Shop No. 13,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 17 Muktar Ahmed Shaik,
Shop No. 14,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.

- 18 Mobin Muktar Shaik,
Shop No. 15,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 19 Dattatray Vishnupant Jadhav,
Shop No. 16,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 20 Vikas Lakhichand More,
Shop No. 17,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 21 Lakhichand More - Deleted
- 22 Saikh Nasir K.,
Shop No. 19,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 23 Anil Rahane,
Shop No. 20,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 24 Indra Ratnakar Chumble,
Shop No. 21,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 25 Minal Ravi Wadikar,
Shop No. 22,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.

- 26 Ravi Damodar Wadkar,
Shop No. 23,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 27 Nitin Vijay Gawande,
Shop No. 24,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 28 Vijay Uttamrao Gawande,
Shop No. 25,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 29 Sachin Namdeo Sangale - Deleted
- 30 S.B. Shelke,
Shop No. 27,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 31 Ramesh Sharma,
Shop No. 28,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 32 Kothamire,
Shop No. 29,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 33 Datta Gangurde,
Shop No. 30,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.

- 34 Belgonkar Ashok L.,
Shop No. 31,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 35 Vijay Patil,
Shop No. 32,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 36 Gokul Hiranman Baviskar,
Shop No. 33,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 37 Arvind Dattaram Padalkar,
Shop No. 34,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 38 Anita Arvind Padalkar,
Shop No. 35,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 39 Rajendra Kisanrao Herekar
Shop No. 36,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 40 Ashok Rajaram Bhosale
Shop No. 37,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 41 Shobha Dattatray Ganguarde
Shop No. 38,
Shopping Center, Survey No. 973/2,

Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.

- 42 Shreyas Bhausahab Ghule
Shop No. 39,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 43 Bhausahab Karbhari Ghule
Shop No. 40,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 44 Bhikchand Tarachand Bedmutha – Deceased
- 44(a) Tarabai B. Bedmatha
Shop No. 41,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 45 Bhushan Shashkant Madane
Shop No. 42,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 46 Amit Ashok Bedmutha,
Shop No. 43,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 47 Vilas Shankarlal Bafana,
Shop No. 44,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 48 Navin Laxman Vaje
Shop No. 45, Shopping Center,
Survey No. 973/2, Near Bhamre
Hotel, Old CIDCO, Nashik 422 009.

- 49 Rakesh Chawhan (Harish),
Shop No. 46,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 50 D. D. Anare,
Shop No. 47,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 51 Arun Deshpande,
Shop No. 48,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 52 Vinod Jagannatha Khairanar
Shop No. 49,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 53 Abdul Iqbal Shaikha,
Shop No. 50,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 54 Pravin Bhalchandra Sonawane,
Shop No. 51,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.
- 55 Sou. Kotawar K. D.,
Shop No. 52,
Shopping Center, Survey No. 973/2,
Near Bhamre Hotel, Old CIDCO,
Nashik 422 009.

..... Respondents

**WITH
CIVIL APPLICATION NO.50 OF 2019
IN
PUBLIC INTEREST LITIGATION NO.141 OF 2010**

Prabhavati Vittalrao Saskar and othersApplicants

IN THE MATTER BETWEEN

Shri. Girish Ganpatrao Shirwadkar & Ors.Petitioners

Versus

CIDCO Ltd. & othersRespondents

**WITH
WRIT PETITION NO.7860 OF 2019**

Dattatray Vishnupant Jadhav ..Petitioner

Versus

CIDCO, Through Administrator and others ..Respondents

**WITH
WRIT PETITION NO.8806 OF 2019**

Shaikh Mukhjtar Ahmad Abdul ..Petitioner

Versus

CIDCO, Through Administrator and others ..Respondents

**WITH
WRIT PETITION NO.8808 OF 2019**

Hakim Jakiuddin Khandwala ..Petitioner

Versus

CIDCO, Through Administrator and others ..Respondents

**WITH
WRIT PETITION NO.8814 OF 2019**

Mobin Mukhtar Shaikh ..Petitioner

Versus

CIDCO, Through Administrator and others ..Respondents

**WITH
WRIT PETITION NO.8810 OF 2019**

Shabbir Jakiuddin Khandwala	..Petitioner
Versus	
CIDCO, Through Administrator and others	..Respondents

**WITH
WRIT PETITION NO.8809 OF 2019**

Anita Arvind Padalkar	..Petitioner
Versus	
CIDCO, Through Administrator, Nashik and others	..Respondents

**WITH
WRIT PETITION NO.8813 OF 2019**

Dr. Siddharth Barku Shelke	..Petitioner
Versus	
CIDCO, Through Administrator, Nashik and others	..Respondents

**WITH
WRIT PETITION NO.8257 OF 2019**

Anissoddin Kutuboddin Shaikh	..Petitioner
Versus	
CIDCO, Through Administrator, Nashik and others	..Respondents

**WITH
WRIT PETITION NO.8812 OF 2019**

Indira Ratnakar Chumbale	..Petitioner
Versus	
CIDCO, Through Administrator, Nashik and others	..Respondents

**WITH
WRIT PETITION NO.6314 OF 2019**

Anil Jagannath Bhamare	..Petitioner
Versus	
CIDCO, Through Administrator, Nashik and others	..Respondents

**WITH
WRIT PETITION NO.8807 OF 2019**

Nasirooddin Kutuboddin Shaikh	..Petitioner
Versus	
CIDCO, Through Administrator, Nashik and others	..Respondents

**WITH
WRIT PETITION NO.8811 OF 2019**

Prabhavati Vithalrao Saskar	..Petitioner
Versus	
CIDCO, Through Administrator and others	..Respondents

Mr. Sanjiv A. Sawant a/w. Mr. Sachin D. Kadam for the
Petitioners in PIL
Mr. Shriram Kulkarni a/w. Radhali Kadam for the Petitioners in all
Writ Petitions and for Applicants in CAI No.50 of 2019
Mr. M. L. Patil for Respondent Nos.3 and 4 in Writ Petition
Nos.7860, 8806, 8808, 8814, 8810, 8809, 8813, 8257, 8812,
6314, 8807, 8811 of 2019
Mr. Ashutosh M. Kulkarni a/w. Mr. Akshay R. Kulkarni for
Respondent – CIDCO in all matters
Ms. Jyoti Bajpayee for Respondent Nos.5, 8, 20, 24, 25 to 28,
30 to 34, 36, 39 to 43, 48, 50, 52 & 53

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

DATE : FEBRUARY 21, 2024

ORAL JUDGMENT (PER : CHIEF JUSTICE)

1. Heard learned counsel representing the respective parties and perused the records available before us on these petitions.

2. Since the subject matter of Public Interest Litigation Petition No.141 of 2010 (**PIL Petition**) and the batch of these Writ Petitions are intertwined, with the consent of the learned Counsel for the parties, they are being decided by the common judgment and order which follows:

3. PIL Petition No.141 of 2010 has been filed questioning the allotment of 52 shoplets on land bearing Survey No.973/2 in Sector B3, NH-Falguna, new Nashik by the City and Industrial Development Corporation (hereinafter referred to as the **CIDCO**) to Respondent Nos.4 to 55. Challenge to the impugned allotment of these shoplets has been made, *inter alia*, on the ground that the same was made by the CIDCO without any public advertisement or without calling for any tender process, in an arbitrary and illegal manner. Allegations have also been made in the PIL Petition that the CIDCO, while making the impugned allotments of shoplets has acted not in *bona fide* manner; rather the impugned decision suffers from the vice of

favouritism inasmuch as different group of shoplets have been allotted to members of only one family. It is, thus, the case of the Petitioners that the impugned allotments having been made without any public advertisement which is contrary to the law laid down by the Hon'ble Supreme Court in the case of ***City Industrial Development Corporation Through its Managing Director Vs. Platinum Entertainment and Ors. and other connected appeals***¹. It is the case of the Petitioners in PIL Petition that Regulation 4 of the New Towns Disposal of Lands Regulations 1992 (hereinafter referred to as the **1992 Regulations**) though permits CIDCO to dispose of plots of land by considering individual applications, however, Hon'ble Supreme Court in **Platinum Entertainment (supra)** has clearly laid down that notwithstanding Regulation 4, CIDCO may make all endeavour to make allotment of plots by open tender i.e. by competing bids. It is, thus, argued that in the instance case since the impugned allotment of shoplets was made by the CIDCO without taking recourse to the process of open tender or competing bids, hence the allotment is arbitrary and thus, is liable to be quashed.

¹ (2015) 1 SCC 558

4. Opposing the PIL Petition, it has been stated by learned Counsel representing the CIDCO that Regulation 4 permits CIDCO to allot land not only by public auction or tender but also by considering individual applications and hence it was well within the powers and competence of the CIDCO to have considered the individual applications made for allotment by the private Respondents and accordingly allotments made in their favour were lawful. It is further submitted on behalf of the CIDCO that the impugned allotments were made in the year 2004 whereas the PIL Petition has been filed after a delay of about 6 years on 20th April 2010 without any explanation for such delay. It is also stated by the learned Counsel representing the CIDCO that as a matter of fact the impugned allotments were made by the CIDCO in an endeavor to rehabilitate certain encroachers and to accommodate the existing shop-keepers. Further submission is that the existing shop-keepers were accommodated in one shopping complex after removing their unauthorized construction so that the area may be developed in an appropriate manner.

5. Drawing our attention to a Report of Joint Survey and visit to Sector B-3, NH-Falgun (encroached area) on 29th July 2004, it

has been stated by the learned Counsel representing the CIDCO that on such survey it was found that in front of 20 mtr. wide road 52 shop-keepers have constructed shopping complex and that these shop-keepers had been doing their business since last 10-15 years and further that they are also having Shop Act License, tax receipts issued by the Nashik Municipal Corporation and telephone bills etc. As per the report, the shop-keepers were ready to purchase the shoplet plots from CIDCO at the same location and had agreed for demolition of the entire construction / encroachment before taking possession of the plot. The report of the joint survey dated 29th July 2004 is extracted below:

"Report of Joint Survey and visit to Sect-B3, Nh-Falgun, (Encroached area) on 29-07-2004"

*As per joint inspection of encroached area and survey of shopping in Sect-B3, Nh- Falgun, the list of shopkeepers is prepared as enclosed herewith. All the names are verified at site by checking each shop, which are fronting 20m wide road, starting from south end towards north. Actually all the constructed shopping blocks are irregularly located where **total 52 shopkeepers** having shop areas. All these shopkeepers are doing business there since last 10 to 15 years as they are having shop act license, NMC tax receipts, telephone bills etc.*

Now all these shopkeepers are ready to purchase the shoplet plot from CIDCO at the same location and also agree with the demolition of the entire construction/encroachment before taking possession of the

plot. At the time of proposal only 30 to 34 shopkeepers were willing and applied CIDCO for plot, but after knowing the CIDCO's policy in respect of 34 shopkeepers, all have now shown willingness for the shoplet plot from CIDCO. Hence now it is essential to inform all these 52 no shopkeepers by letter of intent after taking undertaking on Rs.100/- stamp paper so that there will not be any objection of any of them. As this is very sensitive area, we must take care of law and order problem. Apart from above mentioned 52 shopkeepers having shop area fronting 20 mt wide road, there were about 7 to 8 more persons living behind this shopping area where they are doing the business like tire repairs, welding, Gadi cushioning, tailoring etc. However they will also demand for the plot, hence minimum total 60 no of shoplet plots are necessary to accommodate all these encroachers.

*Thus, overall **60 shoplet** plots of **size 3.0m X 7.0m(min)** each must be carved out along the existing 20 mtr wide road in sect B3, Nh-Falgun.*

*Sd/-
A.E. (Mkt)*

*Sd/-
Adm(Nsk)"*

6. It is, thus, the case of CIDCO that the impugned allotments of shoplet plots were made to the private Respondents with a view to rehabilitate them and also with a view to develop the area in an appropriate manner and further that such allotments were made in terms of the provisions contained in Regulation 4 of the 1992 Regulations.

7. In reply to the submission made by the learned Counsel for the Petitioners in PIL Petition based on the judgment of the Hon'ble Supreme Court in the case of **Platinum Entertainment**

(supra) it has been argued on behalf of the CIDCO that the said judgment was rendered on 26th September 2014 whereas the Letter of Intent for making the impugned allotments was issued on 9th August 2004 and accordingly allotment was made on 2nd March 2006 and hence the judgment in the case of **Platinum Entertainment (supra)** will have no application so far as the facts of the present case are concerned.

8. On behalf of Respondent Nos.4 to 55 (hereinafter referred to as the **allottees**) it has been argued that these allottees are petty vendors who run very small businesses such as repair of tyre etc. who have been in possession over the land since long and on the offer made to them by the CIDCO they agreed to take the land on allotment. It is also the submission on behalf of the allottees that the land comprised in Survey No.973/2 was initially owned by Badade family which was later-on acquired by the State Government for CIDCO in the year 1976. It has further been submitted that the allottees were allowed by the erstwhile owner of the land to put up their shops and the shops existed since the year 1984 and further that it was for the first time on 13th July 2001 that public notice was issued by the CIDCO informing that the land in question was acquired by the

State Government for the CIDCO in the year 1976, however, the allottees continued in possession over the said land.

9. It is further stated that the CIDCO issued notice to the allottees on 10th July 2001 under Section 55(1) of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as the **MRTA Act**) requiring them to remove the structures pursuant to which reply was submitted by these allottees. It is also the case of the allottees that an application was made on 24th March 2004 by the allottees to the CIDCO to allot the land to them and such prayer was accepted by the CIDCO which issued a letter dated 9th April 2004 informing them that the request to allot the shoplets has been approved and that they should pay Rs.10,000 as Earnest Money Deposit (**EMD**) either in cash or by Demand Draft drawn in favour of the CIDCO. The letter dated 9th April 2004 further stated that after making the payment of EMD and immediately after receipt of lay out from planning section the actual allotment letter shall be issued by the CIDCO.

10. Our attention has also been drawn by learned Counsel for the allottees that vide letter dated 16th February 2004 the

allottees were informed that they had constructed shops on the land acquired by the CIDCO and that the CIDCO has nothing to do with any transaction made by the allottees with Badade family. By the said letter it was also informed to the allottees that if they intended to purchase the land they may communicate the same. Pursuant to the said letter dated 16th February 2004 a prayer was made by the allottees showing their willingness to purchase the land whereupon by means of letter dated 9th August 2004 the allottees were required to make deposit of Rs.10,000/- informing further that actual allotment letter shall be issued by CIDCO on making the payment of EMD and on receipt of lay out from planning section. Submission further on behalf of the allottees is that pursuant to the said offer letter dated 9th August 2004 the allottees made deposit of Rs.10,000/- whereupon formal allotment letter was issued on 2nd March 2006. One such allotment letter has been annexed as Exhibit-J in Writ Petition No.8806 of 2019 filed by one of the allottees.

11. Placing reliance on Regulation 4 of 1992 Regulations, it has been argued on behalf of the allottees that one of the modes for allotment was by considering the individual applications and the

facts of the present case justify the allotment made in favour of the allottees based on consideration of individual applications, rather than going for allotment by taking recourse to the process of public auction or tender. Drawing our attention to office noting dated 13th May 2004 it has been submitted by learned Counsel for the allottees that from a perusal of the said noting it is abundantly clear that the proposal for regularization of unauthorizedly constructed shops in Survey No.973/2 was considered and that since the land belonged to CIDCO and it is in these circumstances that the proposal was made to sell the shoplets to the persons who have been occupying the shops and that the proposal to regularize the area in favour of the persons who have been doing businesses for last 18-20 years was made with a view to develop the same and rehabilitate the allottees. Thus, it has been prayed that the PIL Petition may be dismissed.

12. The allottees have also filed Writ Petitions with a prayer, *inter alia*, that the Nashik Municipal Corporation may be directed not to demolish shoplets and permit them to reconstruct the shop. Another prayer made in the Writ Petition is that the CIDCO may be issued appropriate directions to put the allottees in possession of their respective shops allotted to them vide

allotment letter dated 2nd March 2006. It has been stated by the learned Counsel representing the allottees in the petitions filed by them that prior to filing the Writ Petitions they had instituted a suit in the Court of Civil Judge, Junior Division, Nashik with a prayer, *inter alia*, that it be declared that all these shoplet plots are allotted and occupation of the said plots are given to the Plaintiffs by the CIDCO and the Nashik Municipal Corporation does not have any right to take-over the land which is in their possession. Another prayer made in the suit was that by way of permanent injunction, the Nashik Municipal Corporation be restrained from occupying the land till possession of the shoplets is given to the Plaintiffs by CIDCO. In the said suit, a preliminary issue was framed by the learned Trial Court as to whether the Civil Court has jurisdiction to try, entertain and dispose of the suit? The learned Civil Judge, Junior Division, Nashik, by means of an order dated 11th March 2010 held that the jurisdiction of the Civil Court was barred as provided under Section 8A of the Bombay Government Premises (Eviction) Act, 1955. The said order dated 11th March 2010 was taken by some of the allottees in appeal in the Court of District Judge-7 Nashik and the learned appellate Court vide its judgment and order

dated 30th January 2016 while setting aside the order dated 11th March 2010 passed by the learned Trial Court, allowed the appeal and remitted the matter back to the learned Trial Court to decide the suit on merits. The said appeal is said to be pending.

13. It is the submission on behalf of the allottees that what necessitated them to institute the Writ Petitions before this Court is that the structures erected by the allottees were demolished by the Nashik Municipal Corporation ignoring the allotments made in their favour by the CIDCO on 2nd March 2006 and that in view of the said allotments, the allottees were entitled to take possession of the land. Our attention has been drawn to a letter dated 28th August 2018 written by the CIDCO to one of the allottees on the 'subject – regarding possession of shoplet' whereby it was informed that the detail proposal for giving possession to the allottees was forwarded to the Head Office and that the matter is pending before this Court and therefore request for giving possession cannot be proceeded with. It has further been stated on behalf of the allottees that the CIDCO again informed the allottees by means of another letter dated 17th October 2018 that since the matter is pending before this

Court, hence no further action can be taken for delivery of possession of the plots. It is in the light of these facts that the allottees have also instituted the Writ Petitions with a prayer to declare that the demolition undertaken by the Nashik Municipal Corporation is illegal and that accordingly a direction be issued to permit the allottees to reconstruct their shops. Further prayer made in the Writ Petitions filed by the allottees is that the CIDCO be directed to put them in possession over the plots allotted to them.

14. Opposing the Writ Petitions filed by the allottees it has been argued by the learned Counsel appearing for the Petitioners in PIL Petition that since the suit instituted by the allottees is pending consideration before the learned Trial Court, hence during pendency of the said suit, the prayers made in the Writ Petitions cannot be granted and thus the Writ Petitions are liable to be dismissed.

15. From the pleadings of the parties and the submissions made by the learned Counsel representing them, the issue which emerges for our consideration and adjudication is as to whether the impugned allotments made in the year 2006 was legal and

as to whether Regulation 4 of 1992 Regulations permits the impugned allotment in the facts of the present case. The other issue which needs adjudication by us in this batch of Writ Petitions is as to whether the prayer made in the Writ Petitions filed by the allottees can be granted keeping in view the pendency of the civil suit instituted by them before the learned Trial Court.

16. The sheet anchor of arguments made by the learned Counsel representing the Petitioners in PIL Petition is that no allotment of any Government land could be made by the CIDCO in favour of the allottees without taking recourse to the tender or bidding process by issuing public notice for the said purpose and that in view of the law laid down by the Hon'ble Supreme Court in the case of **Platinum Entertainment (supra)** it was not permissible for the CIDCO to have allotted these 52 shoplet plots to the allottees.

17. For appropriately appreciating the submissions made by the learned Counsel for the parties it will be apposite to extract Regulation 4 of the 1992 Regulations framed in exercise of powers conferred by Section 159(1)(a) of MRTP Act 1996 which

is as under:

"Manner of disposal of land: - *The Corporation may dispose plots of lands by public auction or tender or by considering individual applications as the Corporation may determine from time to time."*

18. Thus, a perusal of the afore quoted Regulation 4 reveals that the CIDCO is vested with the authority to dispose of plots of lands by taking recourse to three modes, viz; (i) by public auction, (ii) by tender process, and (iii) by considering individual applications, as the Corporation may determine. Accordingly, allotments of plots of land by considering the individual application by the CIDCO is permissible under Regulation 4 as afore quoted. The Hon'ble Supreme Court in its judgment rendered in the case of **Platinum Entertainment (supra)** on 26th September 2014 has observed that Regulation 4 of 1992 Regulations though provides an authority to dispose of plots of land by public auction or by tender or by considering individual applications but such action on the part of the Corporation should be taken rationally and after applying the methods which are more rational and reflect non arbitrariness and would not be smacked under the clout of favouritism and/or nepotism or being influenced by political authorities. The Hon'ble Supreme Court has observed in this judgment that although the CIDCO has

power to allot the land in any one of the manners stated in Regulation 4, but conduct of such allotment should have been more clear and transparent without presence of any element of favouritism or nepotism or without being influenced by any such thing in exercising the discretion conferred upon the CIDCO. Paragraph 52 of the said judgment is relevant which is quoted hereunder:

"Regulation 4, to which our notice was drawn by the learned counsel appearing on behalf of the respondents, although provided an authority to dispose of plots of land by public auction or by tender or by considering individual applications as the Corporation would determine from time to time, but such action on the part of the Corporation should have been taken rationally and after applying the methods which are more rational and reflect non-arbitrariness and would not be smacked under the clout of favouritism and/or nepotism or being influenced by political personalities. In our opinion, although CIDCO had the power to allot the land in any one of the manners stated in Regulation 4 above, but the conduct of such allotment should have been more clear and transparent and without presence of any element of favouritism and/or nepotism and without being influenced by any such thing in exercising the discretion conferred upon CIDCO."

In the same breath, however, the Hon'ble Supreme Court has further observed in **Platinum Entertainment (supra)** that it is high time that notwithstanding Regulation 4, the CIDCO may make all endeavor to make

allotments of plots by open tender or competing bids and shall not take any decision for allotment of Government land at the instance of Ministers and High Dignitaries for any purpose whatsoever. Paragraph 54 of the judgment in the case of **Platinum Entertainment (supra)** is also extracted hereunder:

"54. We take serious note and express our anguish, the way the authorities of CIDCO showed undue favour to the respondents and managed to allot the Government land in favour of one person knowing fully well that the aforesaid proprietor of the Company, in different capacity and in dummy names, sought allotments of plots. The way CIDCO has been dealing with the Government property, it is high time, we observe, that notwithstanding Regulation 4, as contained in the Regulations, the appellant CIDCO may take all endeavour to make allotments of plots by open tender or competing bids and shall not take any decision for allotment of Government land at the instance of the Ministers and High Dignitaries for any purposes whatsoever."

19. If we read the judgment of the Hon'ble Supreme Court in the case of **Platinum Entertainment (supra)** attentively, what we find is that the Hon'ble Supreme Court has recognized the power and capacity of CIDCO to take recourse to any one of the three modes of allotment of lands as per the prescription available in Regulation 4 of 1992 Regulations. The judgment further observes that in case the discretion is exercised by the CIDCO in adopting either of three modes for allotment of plots, such an

action on the part of CIDCO should be taken rationally and after adopting the methods which are rational and reflect no arbitrariness.

20. Thus, in our opinion allotment of land by considering individual application is permissible provided while adopting such a method of exercising discretion by the CIDCO is not influenced by arbitrariness and it is not under the clout of favouritism and/or nepotism and further it should not be influenced by political considerations. So far as the observations made by the Hon'ble Supreme Court in paragraph 54 in **Platinum Entertainment (supra)** is concerned, we may only note that the same would apply prospectively and will have no application so far as the facts of the present case are concerned for the reason that the allotment in the instant case was made much prior to the judgment rendered by the Hon'ble Supreme Court which was delivered on 26th September 2014, whereas, the allotment was made in the instant case on 2nd March 2006. It is also to be noticed that the allottees are petty vendors doing their businesses from small shops having an area of 3 x 7 sq.mtrs. and that they have been in possession over the land for about 18-20 years before the request made by the allottees for

regularizing their structures was acceded to by CIDCO and accordingly an offer was made by the CIDCO to allottees to purchase the same. It is also noticeable that the decision to consider the individual applications made by the allottees for allotment of the shoplet plots was made also with a view to develop the area and to rehabilitate the allottees. There is nothing on record which suggests that the CIDCO, while making the impugned allotments of shoplet plots to the allottees was influenced by any extraneous consideration or by any political influence. The decision to allot the shoplet plots, in our opinion and as the material on record suggests, was made in a *bona fide* manner with a view not only to develop the area but also to rehabilitate the allottees who have been in possession over the land in question since long duration of 18-20 years before the allotment was offered to them by the CIDCO.

21. It is also to be noticed that under Section 113(3A) of the MRTP Act the New Town Development Authority (CIDCO in the instant case) is entrusted by the State Government the work of developing and disposing the land in the area. Thus, allotment of Government land is well within the authority of the New Town Development Authority (CIDCO in the instant case). Section 118

of the MRTTP Act also provides that subject to any directions which may be given by the State Government, the Development Authority may dispose of any land acquired by it or vested in it, to such persons, in such manner, and subject to such terms and conditions as are considered expedient for securing development. Thus, one of the purposes for which the Development Authority is formed by the State Government is to empower the Development Authority to dispose of any land for the purposes of securing the development. The New Town Disposal of Lands Regulations 1992 thus, are referable to Section 118 of the MRTTP Act read with Section 159(1)(a) of the MRTTP Act. Section 118 of the MRTTP Act reads as under:

"118. Disposal of land by Development Authority.

(1) Subject to any directions given by the State Government under this Act, a Development Authority may dispose of any land acquired by it or vesting in it to such persons, in such manner, and subject to such terms or conditions as they consider expedient for securing the development of the new town in accordance with proposals approved by the State Government under this Act :

Provided that, a Development Authority shall not have power, except with the consent of the State Government, to sell any land or to grant a lease of any land for a term of more than ninety-nine years, and the State Government shall not consent to any such disposal of land unless it is satisfied that there are exceptional circumstances which render the disposal of the land in that manner expedient.

(2) The powers of a Development Authority with respect to the disposal of land acquired for it for the purposes of this Act shall be so exercised as to secure, so far as practicable, that persons who were living or carrying on business, or other activities on land so acquired shall, if they desire to obtain a plot or accommodation on land belonging to, or vesting in, the Development Authority and are willing to comply with any requirements of the Development Authority as to its development and use, have an opportunity to obtain a plot or accommodation suitable to their reasonable requirements on terms settled with due regard to the price at which any such land has been acquired from them.

(3) Nothing in this Act shall be construed as enabling a Development Authority to dispose of land by way of gift, mortgage or charge, but subject as aforesaid, references in this Act to the disposal of land shall be construed as reference to the disposal thereof in any manner, whether by way of sale, exchange or lease by the creation of any easement (sic, easement), right or privilege or otherwise."

22. Thus, as per Section 118 of the MRTP Act the development authority is empowered to dispose of any land provided it is for securing the development of the new town. So far as the facts of the instance case are concerned, there is enough material on record, as discussed above, which clearly shows that the CIDCO took a decision to allot the land to the allottees on consideration of their applications with a view to appropriately develop the area and also with a view to rehabilitate them.

23. In the facts and circumstances of the case it cannot be said that while considering the prayer made by the allottees for

allotment of shoplets land to them, the discretion exercised by the CIDCO was in any manner influenced by any kind of extraneous considerations such as political influence or favouritism or nepotism. The allotment, in our opinion, was made having regard to the aim of developing the area and also with a view to rehabilitate the allottees who are petty vendors and have been doing their businesses since long.

24. In view of the aforesaid discussion, our indefeasible conclusion is that the impugned allotment of shoplets land made in favour of the allottees by CIDCO was well within its competence in view of the provisions contained under Section 118 of the MP RTP Act read with Regulation 4 of the 1992 Regulations. The allotment does not appear to have been influenced by arbitrary exercise of discretion available to CIDCO for taking recourse to consideration of individual applications for allotment which is permissible as per the prescription available in Regulation 4 of 1992 Regulations.

25. As far as the plea raised by the learned Counsel for the Petitioners in the PIL Petition that during pendency of the civil suit instituted by the allottees the prayer made by the allottees

in their respective Writ Petitions cannot be granted, we may state that the prayer made in the suit is for declaration and injunction. Having regard to the nature of the suit and the prayers made therein, we are of the opinion that the consideration of the prayers made in the Writ Petition filed by the allottees cannot be said to be barred. In the Writ Petitions filed by the allottees, apart from making a prayer for declaration that the action of Nashik Municipal Corporation of demolition of shops to be illegal, the other prayer made is that the CIDCO be directed to put allottees in possession of the shoplets allotted to them. The cause of action to file the Writ Petition by the allottees had arisen once their prayer for putting them in possession was declined by CIDCO on the ground of pendency of the PIL Petition. In this view of the matter, we are of the clear opinion that once the impugned allotment made in favour of the allottees by CIDCO is found to be lawful, a direction needs to be necessarily issued to CIDCO for putting these allottees in possession of the shoplets land allotted to them.

26. As far as the prayer seeking declaration of demolition undertaken by the Nashik Municipal Corporation of the shops constructed by the allottees to be illegal, it may be stated that

the construction was lawfully raised and hence we do not find any fault with the demolition of shops.

27. For the discussion made and the reasons given above, it is our considered view that the PIL Petition lacks any substance. Hence, it is liable to be dismissed, whereas, the Writ Petitions filed by the allottees deserve to be allowed, partly.

28. We, thus, make the following order:

- a) PIL Petition No.141 of 2010 is hereby dismissed.
- b) All 12 Writ Petitions filed by the allottees are partly allowed and accordingly it is directed that CIDCO shall put all the 52 allottees in possession over the shoplet plots allotted to them within two months.
- c) We also direct that the allottees shall be bound by the terms of allotment made in their favour and they shall also fulfill their obligations and liabilities arising out of the allotment.
- d) The Writ Petitions, accordingly, stand finally disposed of.
- e) Pending Interim Applications, if any, shall also stand disposed of.
- f) There will be however, no order as to costs.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)