Sumedh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13050 OF 2023

GODREJ PROPERTIES LTD,
A Company incorporated under the provisions of the Companies Act, 1956, through its authorized Representative Mr Tarpit Patni, having its registered office at Godrej One, 5th floor, Pirojshanagar, Eastern Express Highway, Vikhroli (E), Mumbai-400079. ...**PETITIONER**

~ VERSUS ~

THE CITY AND INDUSTRIAL DEVELOPMENT CORPORATION OF MAHARASHTRA LTD,
A Government Company within the meaning of the Companies Act, 1956 having its registered office at Nirmal Building, 2nd floor, Nariman Point, Mumbai-400021. ...**RESPONDENT**

WITH

WRIT PETITION NO. 13049 OF 2023

AND

WRIT PETITION NO. 13054 OF 2023

SUMEDH NAMDEO SONAWANE

Digitally signed by SUMEDH NAMDEO SONAWANE
Date: 2024.02.20 10:10:40 +0530

SHELTON INFRASTRUCTURE PVT LTD,
a company incorporated under the provisions of the Companies Act, 1956 having its registered office at 31, Sakhar Bhavan, Opp Oberoi Shopping Centre, 230, Nariman Point, Mumbai-400 021. **...PETITIONER**

~ VERSUS ~

CITY AND INDUSTRIAL DEVELOPMENT CORPORATION OF MAHARASHTRA LTD,
a Government of Maharashtra undertaking incorporated under the Companies Act, 1956 having its registered office at Nirmal Building, 2nd floor, Nariman Point, Mumbai-400021. **...RESPONDENT**

APPEARANCES

FOR THE PETITIONER IN WP/13050/2023 "GODREJ"	**Dr Milind Sathe, Senior Advocate,** *with Yash Momaya, Samit Shukla, Saloni Shah & Sayali Diwadkar, i/b DSK Legal.*
FOR THE PETITIONER IN WP/13049/2023 & WP/13054/2023 "SHELTON"	**Ms Bindi Dave,** *with Ieshan Sinha, Ayesh Gandhi & Gaurang Samel, i/b Wadia Ghandy & Co.*
FOR THE RESPONDENT-CIDCO	**Mr GS Hegde, Senior Advocate,** *i/b Ms PM Bhansali, for the Respondent CIDCO.*

CORAM : G.S.Patel &
Kamal Khata, JJ.

DATED : 12th February 2024

ORAL JUDGMENT (*Per GS Patel J*):-

1. In all these Petitions, Rule. Returnable forthwith.

2. The three Petitions before us seek substantially the same relief: a quashing of the order of 11th October 2023 by the City and Industrial Development Corporation of Maharashtra ("**CIDCO**") cancelling the allotments of certain plots of which the Petitioners were successful bidders in an open auction process.

3. The Petitions are all framed as straightforward Article 14 challenges. According to the Petitioners, the impugned orders are facially discriminatory against the Petitioners. They are irrational. Others identically placed have not received such orders of cancellation. Only these Petitioners have been singled out.

4. It is common ground that on 2nd February 2021, CIDCO floated tenders for two schemes. These were for the allotment of 13 plots in Navi Mumbai advertised as being for residential and commercial use inter alia at Sanpada in Navi Mumbai. These were to be e-auctions. All the tenders are in identical terms. The successful bidder was to take the plots on leasehold basis under the Navi Mumbai Disposal of Lands (Amendment) Regulations, 2008. The entire lease premium and other charges would have to be paid before the agreement of lease was executed and possession delivered. Possession was assured free of encroachment and encumbrances. The lease premium, after deducting the earnest money deposit, was to be paid in two equal installments. The Managing Director of CIDCO had the authority to extend time by not more than three months for the first instalment and not more than ten months for the second instalment. This would be, however, subject to payment of interest.

5. Godrej Properties Ltd ("**Godrej**") submitted its bid and was the successful bidder for two plots. Plot No 8 was a little over 3,300 sq mts at Sector 19, Node, Sanpada. Plot No 9 was just under 3,300 sq mts also at Sector 19, Node Sanpada. For Plot No 8 Godrej's offer was Rs 77,17,44,941.72. For Plot No 9 the offer was Rs 89,01,74,368.20. Shelton Infrastructure Pvt Ltd ("**Shelton**") was the successful bidder for Plot No 10 and 11 at the same location. For Plot No. 10 Shelton's bid was Rs 85,37,05,380.33. For Plot No 11 Shelton's bid was Rs 101,09,02,684.68.

6. Both Godrej and Shelton paid various amounts as earnest deposits to CIDCO. CIDCO issued separate allotment letters for the four plots. The lease premium was, as we have seen, payable in two tranches. There were certain amendments relating to GST, but we are not concerned with this.

7. What is relevant is that the Petitioners then learnt that there were some controversies and disputes between CIDCO and the Navi Mumbai Municipal Corporation ("**NMMC**") regarding their respective statutory entitlements over lands in Navi Mumbai.

8. CIDCO was originally the statutory authority in whom all these lands vested. After the NMMC was brought into being, some of these plots (but not all) vested with the NMMC. This meant that for the lands in Navi Mumbai, both CIDCO and NMMC were planning authorities under the Maharashtra Regional & Town Planning Act, 1966 ("**MRTP Act**") but for distinct and distinctly identifiable plots of land or areas. The controversy apparently was that for the plots that CIDCO had auctioned, and which were said to be available for residential and commercial development, development permissions were denied by the NMMC on the ground that the plots were under reservations proposed by NMMC for various public purposes. This resulted in the allottees not being able to develop their plots.

9. The Petitioners (and other successful tenderers for other plots) believed that too would be seriously prejudiced: they had bid at the auctions and made deposits, but only to find that there were now restrictions on development. Godrej filed Writ Petition No 2475 of 2021. Shelton filed Writ Petition No 2473 of 2021 and Writ Petition No 2474 of 2021. Other successful bidders filed similar writ petitions.

10. On 7th May 2021, this Court passed an order in all these Writ Petitions directing *inter alia* that the schedule of payment in the allotment letters be extended or suspended and this was to be done without levying or imposing any interest, charges, penalty or late/delayed payment charges of any nature whatsoever on the Petitioners.

11. The State Government sought to intercede in the matter invoking its powers under Section 154 of the MRTP Act, that is to say, by issuing directions to the NMMC and CIDCO regulating and defining their respective powers. This was presumably to address the issues faced by allottees at e-auctions of these plots.

12. These directions of the State Government under Section 154 of the MRTP Act and the allotment of plots by CIDCO to various bidders came to be challenged in this Court in two separate Public Interest Litigations viz., PIL No. 22 of 2021 (*Nishant Karsan Bhagat v CIDCO & Ors*) and PIL No. 37 of 2021 (*Sunil Garg & Ors v State of Maharashtra & Ors*). Godrej and Shelton were among the respondents to these PILs. They contested the PILs.

13. During the pendency of these matters, CIDCO filed Interim Applications specifically seeking leave to cancel the allotments. Those IAs were ultimately — and this is crucial — not pressed by CIDCO.

14. On 30th August 2022, this Court delivered an elaborate and detailed judgment in the PILs. It dismissed both PILs. A copy of this judgment is at Exhibit "G", at page 120 of the Godrej Petition: *Nishant Karsan Bhagat v City of Industrial Development Corporation of Maharashtra*.[1]

15. Three questions for determination were framed:

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1 2022 SCC OnLine Bom 1758.

> "(i) Whether the General Body of the NMMC proposing to reserve CIDCO plots of land for public amenities, in the absence of publication of a Draft Development Plan as per the provisions of Section 26 of the MRTP Act would create an embargo of a reservation?
>
> (ii) Whether passing of a resolution by the General Body of the NMMC proposing to reserve the plots/lands, can in any manner divest the rights of CIDCO to make allotment of the plots of land?
>
> (iii) Whether the directions issued by the State Government under Section 154 of the Act dated 14 June, 2021 and subsequent directions dated 6 September, 2021 are in any manner illegal contrary to the provisions of the MRTP Act?"

16. Section I of the judgment has the analysis and conclusions starting from paragraph 58 of the SCC OnLine report. The Division Bench considered the impact in law of the State Government's directions under section 154 of the MRTP Act. For our purposes, paragraph 62 is relevant. Here the Division Bench noted that in the Navi Mumbai area there are two Planning Authorities under the MRTP Act. Both are functional. The original authority was CIDCO with whom the functions of planning and development and of preparation of the Development Plan was entrusted. It was a New Town Development Authority under section 113 of the MRTP Act read with section 2(8) of that Act. CIDCO prepared a Draft Development Plan in 1980. This was sanctioned later that year. It was not until 12 years later that the State Government constituted the NMMC for 44 revenue villages. Of these, 29 were included from CIDCO's 1980 final Development Plan. Fifteen years later, in 2007, the State Government altered the limits of the NMMC and excluded 14 revenue areas and retained only one revenue village. Thus, totally 30 revenue villages fell within the NMMC limits. The question noted in paragraph 64 was whether there could be in law an overlap in the jurisdictional authority of these two bodies.

17. The Division Bench noted that CIDCO continued to function as the Development Authority. It also framed the New Bombay Disposal of Lands Regulations 1975. These allowed it to dispose of lands vested in it by lease for residential and commercial use. CIDCO had thus developed lands for various public purposes. The Division Bench held:

> It is, thus, clear that CIDCO ceased to exercise functions of the Planning Authority over the areas in respect of revenue villages comprised within the "developed nodes" of Vashi - Sanpada, Nerul, Belapur-CBD, Kopar Khairane and Airoli **and so far as the lands which were still to be developed and disposed of by CIDCO, the Government clarified the doubts by issuing the said notification under section 154 of the MRTP Act by directing that the NMMC shall act as the Planning Authority in respect of developed nodes of the said areas in accordance with the provisions of Section 2(15)(a) and Section 2(19) of the MRTP Act**.

(*Emphasis added*)

18. In paragraphs 72 and 73, the Division Bench held:

> **72. Such notification being issued under section 154 of the MRTP Act, there was no intention on the part of the State Government to divest CIDCO of the powers vested in it as a 'New Town Development Authority' by virtue of the notification issued under sub-section (3A)**

> **of Section 113 dated 20 March, 1971 which also recognized that under sub-section (8) of Section 113 CIDCO as a Development Authority shall have all powers and carry out all duties of a Planning Authority** including all powers and duties under Chapters III and IV and under all other provisions of the Act as may be relevant for carrying out its objects, hence, all the provisions in respect of the procedure under the MRTP Act would apply, so far as it may be necessary in that behalf.
>
> **73. Such complexion of powers as vested with CIDCO certainly brings about a legal consequence namely, that it was recognized by the State Government that <u>CIDCO is not divested of its powers</u> to develop the lands which are still to be developed and falling within the developed zones of Vashi - Sanpada, Nerul, Belapur-CBD, Kopar khairane and Airoli areas where the NMMC was permitted to exercise its powers as a Planning Authority.** For such land, it was not within the jurisdiction and power of the NMMC to exercise its planning powers on CIDCO plots so as to create any obstruction or an impediment for CIDCO to deal with these lands much less any proposed reservation.

(*Emphasis added*)

19. It was also clarified that to enable CIDCO to discharge its functions as a new town development authority it was not necessary for CIDCO to approach the NMMC for development permissions in respect of lands being developed by CIDCO. The Division Bench held:

> **76.** It is thus clearly seen that in the notification dated 14 June, 2021, as issued under Section 154 of the MRTP Act, the State Government has stated that the Draft Development Plan under Section 26 of the MRTP Act for

the CIDCO areas, included in the NMMC and Panvel Municipal Corporation areas was yet to be published by the concerned Corporations, **hence, the reservations were not applicable to the plots as notified by CIDCO for public auction till issuance of the said notification. It is clarified that as a result the auction process which CIDCO had commenced would remain protected**.

77. As noted above a further clarificatory notification under section 154 of the MRTP Act dated 6 September, 2021 was issued by the State Government, wherein the State Government inter alia directed that although the work of CIDCO to develop the areas of Navi Mumbai was completed and the plots were developed, however, all the powers of CIDCO to lease lands as the owner of the lands shall remain intact. It was further clarified and directed that the reservations imposed by NMMC on the plots of CIDCO 'smaller than 500 sq. mtrs.' belonging to CIDCO should be maintained in the Draft Development Plan, as CIDCO will not get much financial benefits from such plots, as also plots 'excluding such smaller plots' having area of less than 500 sq. mtrs., no reservations shall be placed and considering such matter, the Draft Development Plan be published as per the provisions of Section 26(1) of the MRTP Act. **Thus, by such clarificatory directives issued in exercise of Section 154 of the MRTP Act, the State Government has held that the plots having area more than 500 sq. mtrs. and belonging to CIDCO shall be kept out of the purview of any reservations in the Draft Development Plan to be published by the NMMC under section 26(1) of the MRTP Act**.

78. On a cumulative reading of the different notifications as issued by the State Government under Section 154 of the MRTP Act and as discussed above, **it is manifest that although the NMMC was constituted as a Municipal**

Corporation in exercise of the powers under section 3 of the NMMC Act, 1949, there was never an intention on the part of the State Government to divest CIDCO of any of its authority as a New Town Development Authority or a Development Authority within the meaning of Section 113(3A) read with Section 2(8) of the MRTP Act. Thus, CIDCO was within its power to develop the undeveloped lands even in the developed nodes, which stood vested in it and allowed the said lands by exercising its statutory powers as conferred under section 118 of the MRTP Act along with other ancillary powers being exercised under the New Bombay Disposal of Land Regulations, 1975 and Navi Mumbai Disposal of Lands (Amendment) Regulations, 2008 for disposal of lands.

79. **<u>In these circumstances, it was not permissible for the NMMC to take any position to prevent CIDCO from exercising its statutory powers and duties as the New Town Development Authority to dispose of such lands by purporting to impose an embargo by foisting reservations on the plots of land being developed by CIDCO and now subjected to an allotment by public auction by virtue of the tender process as undertaken in the month of January, 2021 which already stands completed and the allottees, namely, the private respondents, are in the process of finalizing such allotments.</u>**

80. To our mind, it is quite clear that the roles of both CIDCO and the NMMC qua the Navi Mumbai area have been recognized by the State Government and completely within the parameters of the MRTP Act. Time and again by issuance of different notifications, the State Government has clarified the position that no conflict ought to be brought about in the functioning of both these bodies exercising their powers and functions as conferred on them

> under the MRTP Act. Significantly, the intention of the State Government not only from its directives but also from the stand taken by the State Government in the reply affidavit appears to be quite clear, namely, to recognize the role of both these authorities which is quite compartmentalized. The State Government has categorically recognized that since the time CIDCO was constituted as the New Town Development Authority and till the constitution of the NMMC and for such period even after its constitution, CIDCO has discharged its functions as the Planning Authority by reserving lands for different public amenities and it is not the case as put up by the petitioners that the Navi Mumbai area was developed by CIDCO without being alive to the different public needs and purposes and in fact has allocated lands for large number of public purpose. Thus, the charge of the petitioners that the allotment in question in favour of the private respondents by CIDCO is only a revenue earning exercise, is totally untenable. Such revenue being earned by disposal of lands by CIDCO is also being utilized for the purpose of development of Navi Mumbai, which itself is a public purpose.

(*Emphasis added*)

20. The questions framed were ultimately answered by the Division Bench in the negative (paragraphs 92 and 93). The Division Bench concluded that CIDCO had rightfully auctioned lands for the purpose of development by the allottees, namely, the private respondents. This necessarily meant that the reservations proposed by the NMMC on the CIDCO auctioned lands could not continue (Question No i); that CIDCO was not divested of making allotments (Question No ii); and that the directions of the State

Government were not illegal (Question No iii). The PILs were found to be without merit. Paragraphs 92 and 93 read:

> "92. As a sequel to the above discussion, with certitude we conclude that CIDCO has rightfully auctioned lands in question for the purpose of their development at the hands of the allottees, namely, the private respondents.
>
> 93. In view of the above discussions, we answer question nos.(i) to (iii) as framed by us in paragraph 55 above in the negative."

21. The remaining direction in paragraph 95 to CIDCO was to proceed to take further steps in regard to the allotment of plots in accordance with law.

22. The High Court Division Bench judgment was carried to the Supreme Court by some of the PIL Petitioners. The Special Leave Petition was dismissed on 10th February 2023.

23. On 3rd May 2023, this Court took up the previous Writ Petitions filed by the present Petitioners and other successful bidders. The Court delivered a judgment dated 3rd May 2023. This is crucial for our purposes today.[2] All the Writ Petitions were allowed on identical terms. Rule was made absolute in the following terms:

> "41. 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:

2 *Shelton Infrastructure (P) Ltd v State of Maharashtra,* 2023 SCC OnLine Bom 1008.

> (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."

24. Thus, there was by 3rd May 2023 a clear and emphatic rejection of CIDCO's contention that delayed payment charges were liable to be imposed.

25. Pausing for a moment, what this narrative tells us is that CIDCO had filed IAs seeking to cancel the allotments. It made this plea by way of IAs which it withdrew and did not press. The allotments therefore continued. CIDCO then pressed to be able to recover delayed payment charges. This, too, was negatived by the Division Bench.

26. Consequently, all the bidders were liable to make payment of the lease premium but were not required to pay delayed payment charges.

27. Godrej says that on four dates, 12th May 2023, 24th May 2024, 2nd June 2023 and 1st August 2023, it wrote to CIDCO tendering payment or seeking a link for making payment online. Dr Sathe for Godrej argues that the portal was kept closed. Cheques sent were returned. Copies of this correspondence are at Exhibit "J Colly" to the Godrej Petition. For its part,- Shelton says that it wrote several letters between 17th May 2023 and 15th June 2023 to CIDCO demanding compliance with the 3rd May 2023 judgment. Copies of this correspondence are at Exhibit "J" to "N" of Shelton's Writ Petition No 13049 of 2023 and Exhibit "K" to "O" of Shelton's Writ Petition No 13054 of 2023.

28. CIDCO filed IAs in all these disposed Writ Petitions saying that it had decided to challenge the 3rd May 2023 judgment before the Supreme Court. It sought an extension of time of 12 weeks to accept the installments. It also sought a stay of the 3rd May 2023 judgment for another 12 weeks.

29. On 12th July 2023, CIDCO withdrew some or all of these IAs. Then, on 20th July 2023, in the Godrej previous Writ Petition, CIDCO filed IA No 14304 of 2023 and similar IAs in the other Writ Petitions, now seeking a review of the 3rd May 2023 judgment and seeking once again liberty to cancel the allotments and to re-tender these plots. As an interim relief, CIDCO sought that the directions of the Division Bench in its judgment of 3rd May 2023 to CIDCO be stayed.

30. On 11 August 2023, this Court took up these IAs by CIDCO. We find a copy of the order at page 324 of the Godrej Petition. The IAs by CIDCO were all disposed of, the Division Bench finding that there was no merit in them. At that point, Mr Hegde for CIDCO said that the prayers in the IA be treated as an application for "clarification". Even that prayer was rejected with the Court observing that in its preceding discussion it was refraining from issuing any clarification. Importantly, and so that there is no ambiguity about what the High Court intended, we will reproduce paragraphs 3, 4, 9, 10, 12 and 13 of the 11th August 2023 judgment.[3]

> "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, <u>without insisting on any delayed payment charges or interest</u>, 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

3 *City and Industrial Development Corporation of Maharashtra v Gami and Satyam Ventures Pvt Ltd,* 2023:BHC-AS:23159-DB.

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, 2021and 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."

… … …

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.**

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."

(*Emphasis added*)

31. Godrej wrote to the CIDCO on 16th August 2023 tendering payment. There was no reply.

32. Now came the impugned notices on 11th October 2023, cancelling the allotment of all four plots, apparently "to avoid loss to the public exchequer."

33. CIDCO invokes Part A and Part B of the tender in support of this cancellation. Clause 32 of Part A says that if there is any litigation or there is a pending litigation, or a previous allotment is pointed out after the auction then after necessary verification a decision would be taken. That is of no assistance whatsoever. Reliance is also placed on Clause 4.10 of Part B which says that CIDCO reserves the right to amend or revoke any or all of the conditions or to cancel the scheme at its sole discretion. It also reserves the right to reject all or any "offers". But there is a distinction between cancelling a scheme or withdrawing an offer and cancelling an allotment already made. This submission is of no avail.

34. What is interesting, however, is the extremely curious reasoning in the Affidavit in Reply. Before we proceed to that, we note the reliance by Mr Hegde on a decision of the Supreme Court in *Rishi Kiran Logistics (P) Ltd v Kandla Port Trust*.[4] Mr Hegde relies on this for a generalised proposition that no termination of a contract can be the subject matter of a Writ Petition. That is not what the decision says at all.

35. The Affidavit in Reply is curious. We are surprised to see how this has been framed. It is filed by one Gajendra Krishna Jangam, Marketing Manager. Paragraph 7 says that the Affidavit is filed to justify the cancellation of the allotment letters. Paragraph 8 claims that during COVID, CIDCO could not sell the plots. It was solemnly argued that CIDCO did not know the market value of these plots. It claims that because of the reservation the prices were suppressed and artificially depressed.

36. Let us consider this argument. If this was in fact the case, one would have expected CIDCO to have some material to show what ought to have been the price. There is no such material. Second, the argument is demonstrably incorrect because these are not cases where there was a solitary bidder, nor is there any case made out of cartelization. In the Godrej case there were as many as 15 bidders. It is impossible to accept that there was an artificial suppression because of the reservation and therefore, there is a loss to the public exchequer. What is curious is that for other bidders under the same scheme who bid at the same time, CIDCO has not cancelled the

4(2015) 13 SCC 233.

allotments but has accepted the lease premium because those bidders offered to pay delayed payment charges. Those charges have nothing at all to do with an alleged undervaluation. CIDCO has issued identical letters on 11th October 2023 to other bidders but on accepting six or eight months of delayed payment charges. These Petitioners refused to pay the delayed payment charges and stood by the judgment of this Court and its orders that no charges were payable. It is only this that has prompted CIDCO's action.

37. The next argument in the Affidavit in Reply in paragraph 11 that the amounts quoted were on the lower side has only to be stated to be rejected. If this was the only argument, then this would apply to other plots and other bidders also and has nothing whatsoever to do with the tendering or non-tendering of delayed payment charges.

38. Then in paragraph 18, the argument is that because the Petitions were earlier pending, CIDCO could not have cancelled the allotments but now that the Petitions are disposed of CIDCO has cancelled the allotment. That is demonstrably incorrect. CIDCO did not press its application for leave to cancel the allotments, but instead was directed to proceed with them.

39. In paragraph 22, we find a sanctimonious statement that CIDCO has an obligation to fetch the highest rate for its plots. An even stranger argument is that since the bidders accepted the plots knowing of the reservations, they ought to have taken steps to remove those reservations and should not have filed Writ Petitions before this Court.

40. Interestingly, paragraph 24 notes that there were eight Petitions that were disposed of and paragraph 25 really gives the game away. We find it at page 356 of the Godrej Writ Petition and it reads thus:

> "24. I say that there were 8 petitions filed in respect of 09 plots at Sanpada, which were heard together and disposed off by common order of this High court dated 03.05.2022.
>
> 25. I say that some of the other petitioners had voluntarily offered to pay a portion of the Delayed Payment Chargees (DPC), I say that the respective amounts of DPC. Is say that the respective amounts of PDC which the other petitioners/allottees has offered to pay is an under:

Sr No.	Allottee	Plot	Sector	Node	Total Lease Premium in Rs.	DPC offered
1	Juhi Habitat	11	18	Sanpada	72,15,69,320/-	5,29,14,344/-
2	Kamdhenu Green	6+7	19	Sanpada	85,30,49,943/-	6,22,76,782/-
3	Gami & Satyam Ventures Pvt Ltd	10	18	Sanpada	77,90,21,550/-	5,73,10,938/-
4	Gami & Satyam Ventures Pvt Ltd.	8+9	18	Sanpada	97,68,80,520/-	7,14,32,880/-
5	Neelkanth Infratech Co.	14	18	Sanpada	1,53,80,69,196/-	11,26,46,095/-

41. Five of the eight bidders agreed to pay CIDCO some amount of delayed payment charges and therefore CIDCO did not cancel the allotment. Mr Hegde says this was done to mitigate loss to CIDCO. These Petitioners have refused to pay and therefore, the cancellation is justified is the submission.

42. We do not believe that the submissions on behalf of CIDCO can possibly commend themselves. The two PILs were dismissed clearly showing that the reservations attempted by NMMC were outside its jurisdiction. There was an interim order that continued preventing CIDCO from imposing any delayed payment charges. The earlier Writ Petitions filed by Godrej and Shelton succeeded. CIDCO attempted twice to cancel the allotments and sought leave of the Court to do so. These applications were either withdrawn or not pressed. Its review applications and applications for clarification were dismissed. The High Court clearly directed CIDCO to proceed with completing the allotments. CIDCO's applications met with a dismissal. Paragraph 12 of the order of 11th August 2023, which we have set out above, shows that the Division Bench found that CIDCO's applications were mischievous and unsupported by law.

43. In other words, there is not the slightest possibility of CIDCO insisting on delayed payment charges from any of these Petitioners or any other bidder. We clarify that this is not an order for refund of delayed payment charges that other bidders may have voluntarily paid to CIDCO and which CIDCO may have accepted. No other bidder has come to us for any such relief. If that payment was voluntarily made by any other bidder, then there is no question of ordering a refund. But we believe that thee Petitioners before us today are justified in saying that CIDCO was never entitled to delayed payment. There was in fact no delay in payment. CIDCO itself as the New Town Development Authority could not have been unaware of the NMMC's attempt to impose reservations on these very lands even at the time when they were put to auction. It is pointless to say that it was for the Petitioners to remove the reservation. That argument proceeds on a false assumption that the reservations were correctly imposed and were within NMMC jurisdiction in the first place. In fact, CIDCO was contesting the NMMC's attempt to impose reservations on these plots that CIDCO had put to save for allotment by e-auction.

44. In the result, we find that clearly the impugned cancellation orders are unsustainable. They are irrational. They are actuated by irrelevant and external considerations, and they deliberately ignore binding orders of this Court. They appear to us to be an attempt to overreach orders of this Court. They are clearly arbitrary, and they are discriminatory against the Petitioners. All that CIDCO is really saying is that no matter what the orders of the High Court are and no matter that CIDCO has at least twice applied for and then withdrawn a plea for cancellation, it will nonetheless proceed with cancellation unless its demand for delayed payment charges is met (even though this was not permitted by the High Court).

45. All three Petitions succeed.

46. Rule is made absolute in terms of prayer clauses (a), (b), (c) and (d) of the Godrej Writ Petition No 13050 of 2023, which read as follows:

> "A. that this Hon'ble Court be pleased to issue a Writ of *Certiorari* or a writ in the nature of *Certiorari* or any appropriate writ, order or direction calling for the records of the Tender, being Tender MM/05/2020-2021 issued by the Respondent, inviting offers for plot of land being Plot No. 8 admeasuring 3,319.79 square meters, Sector 19, Node

Sanpada, Navi Mumbai, and after examining the same, quash and set-aside the Impugned Notice dated October 11, 2023 [Exhibit – O];

B. that this Hon'ble Court be pleased to issue a Writ of *Certiorari* or a writ in the nature of *Certiorari* or any appropriate writ, order or direction calling for the records of the Tender, being Tender MM/06/2020-2021 issued by the Respondent, inviting offers for plot of land being Plot No. 9 admeasuring 3,296.82 square meters, Sector 19, Node Sanpada, Navi Mumbai, and after examining the same, quash and set-aside the Impugned Notice dated October 11, 2023 [Exhibit-P];

C. that this Hon'ble Court be pleased to issue a Writ of *Mandamus* or a writ in the nature of *Mandamus* or any appropriate writ, order or direction directing the Respondent to proceed further with the Tender, being Tender MM/05/2020-2021, and complete the allotments of plot of land being Plot No. 8 admeasuring 3,319.79 square meters, Sector 19, Node Sanpada, Navi Mumbai to the Petitioner in accordance with the terms and conditions of the Tender, Plot No. 8 Allotment Letter [Exhibit – D, D-1], and the Order of this Hon'ble Court dated May 3, 2023 [Exhibit – I], with further extension of time for making payment without levy of any compensation, interest or delayed payment charges;

D. that this Hon'ble Court be pleased to issue a Writ of *Mandamus* or a writ in the nature of *Mandamus* or any appropriate writ, order or direction directing the Respondent to proceed further with the Tender, being Tender MM/06/2020-2021, and complete the allotment of plot of land being Plot No. 9 admeasuring 3,296.82 square meters, Sector 19, Node Sanpada, Navi Mumbai to the Petitioner in accordance with the terms and conditions of the Tender, Plot No. 9 Allotment Letter [Exhibit – E, E-1], and the Order of this Hon'ble Court dated May, 3, 2023 [Exhibit – I], with further extension of time for making payment without levy of any compensation, interest or delayed payment charges;"

47. Rule is also made absolute in terms of Prayer clauses (a) and (b) of the Shelton Petitions Nos 13049 of 2023 and 13054 of 2023 which are identical and which read thus:

> "a. That this Hon'ble Court be pleased to issue Writ of Certiorari or any other writ in the nature of Certiorari or any other appropriate writ, order or direction calling for all the papers and proceedings in the matter and after going through the same quash and/or set aside the Impugned Cancellation dated 11th October 2023 issued by the Respondent [*Exhibit A hereto*] or any other Notice(s) and/or Direction(s) and/or Order(s) issued by the Respondent in furtherance of the Impugned Notice; and
>
> b. That this Hon'ble Court be pleased to issue a Writ in the nature of Mandamus or such other writ(s)/order(s) and/or direction(s) in the nature of Mandamus directing Respondent to open the payment portal and accept the payment in terms of the allotment letter, [*Exhibit D hereto*] read with the Corrigendum letter [*Exhibit E hereto*], in order to comply with the said Judgment dated 3rd May 2023."

48. As to the question of extension of time, CIDCO will accept payment provided it is made within a period of 10 weeks from today.

49. We clarify that our directions today are to CIDCO to accept the payment, execute the necessary lease deed, deliver possession and take up all applications for permissions for processing in accordance with law.

50. For the purposes of payment, CIDCO is required to open a payment portal to facilitate payment by the Petitioner.

51. The argument that CIDCO is a public authority and these are funds of the public exchequer has only to be stated to be rejected. As a public authority, specifically dealing with public funds, we expect CIDCO to remain firmly within the boundaries of the law. That means being completely diligent in following to the letter every order of this Court and not trying to overreach this Court. We have no hesitation in pointing out that this constant chanting of public exchequer is less than impressive. It does not and cannot and will not permit a public authority to profiteer in the name of the public exchequer by demanding amounts that are not legitimately due to it or which the High Court on a consideration has said are not due to it. We put CIDCO to notice that this is the last time that we will entertain this argument. Since CIDCO deals in such large numbers and insists that it must be paid vast amounts, we will then proceed to impose costs commensurate with this conduct.

52. The application for a stay made on behalf of the CIDCO is refused.

(Kamal Khata, J) **(G. S. Patel, J)**