

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

WRIT PETITION NO.864 OF 2024

**BASAVRAJ
GURAPPA
PATIL**

M/s.Trishul Construction Co.

..... Petitioner

Versus

City Industrial and Development
Corporation of Maharashtra Ltd. & Anr.

..... Respondents

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BASAVRAJ GURAPPA
PATIL
Date: 2024.09.10
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Mr. Navroz Seervai, Senior Advocate a/w Mr. Rohan Cama,
Mr. Aditya Udeshi, Mr. Sanjay Udeshi, Mr. Rahul Sanghvi,
Mr. Netaji Gawade i/by M/s. Sanjay Udeshi & Co. for Petitioner.

Mr. Janak Dwarkadas, Senior Advocate a/w Ms. Namrata Vinod,
Mr. Rahul Sinha and Mr. Soham Bhalerao i/by DSK Legal for
respondent No.1 - CIDCO.

Mr. P. P. Kakade, Government Pleader with Mr. O. A.
Chandurkar, Additional Government Pleader and Ms. G. R.
Raghuwanshi, Additional Government Pleader for respondent
No.2 State.

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
AMIT BORKAR, J.**

**RESERVED ON : AUGUST 20, 2024
PRONOUNCED ON : SEPTEMBER 10, 2024**

JUDGMENT (PER : CHIEF JUSTICE)

1. Heard Mr.Navroj Seervai, learned Senior Advocate
appearing for the petitioner, Mr. Janak Dwarkadas, learned
Senior Advocate representing respondent No.1 – CIDCO and

Mr. P. P. Kakade, learned State Counsel. We have also perused the records available before us on this petition.

(A) Challenge:

2. Initially, the instant writ petition was filed seeking a direction to respondent No.1 for issuing necessary demand letter with respect to second installment of lease premium in respect of the plots in question, viz. Plot No.23 situated at Sector 7, Plot No.7, situated at Sector 8 and Plot No.6 situated at Sector 8, Ghansoli, Navi Mumbai along with late payment charges (LPC) in accordance with the directives issued by the Department of Urban Development, Government of Maharashtra, in its letter dated 1st August 2018 addressed to respondent No.1.

3. During pendency of the writ petition, respondent No.2 took a decision cancelling the allotment of the subject plots made in favour of the petitioner and further forfeiting the earnest money deposit and 25% of the paid lease premium, which was communicated to the petitioner by means of the impugned letter/order dated 30th January 2024.

(B) Background Facts:

4. Pursuant to a tender process for acquiring plots of land at

Ghansoli, Navi Mumbai conducted by respondent No.1, the petitioner was issued letter of allotment by respondent No.1 by accepting its offer, on 18th December 2007 in respect of Plot No.23, Sector 7. Similarly, by means of two separate allotment letters, dated 19th December 2007, the petitioner was also allotted Plot Nos.6 and 7, Sector 8 at Ghansoli, Navi Mumbai. The said allotment letters contain certain condition and also prescribe the payment schedule according to which in respect of Plot No.23 the first installment was to be deposited by the petitioner by 24th January 2008 and the second installment was to be deposited by 25th February 2008. Similarly, in respect of Plot Nos.6 and 7, Sector 8, the petitioner was required to make deposit of the first installment by 25th January 2008 and second installment was to be deposited in respect of these two plots by 25th February 2008. The petitioner was also required to pay certain miscellaneous charges.

5. The petitioner is said to have requested for extension of time for making payment of the first installment of the lease premium for the subject plots, in response to which extension till 23rd March 2008 was granted by respondent No.1 vide letter dated 18th January 2008 to make deposit of the first installment

of the lease premium and accordingly in March 2008 the payment of the first installment of the lease premium in relation to the subject plots was deposited.

6. The second installment of the lease premium could not be deposited in time and according to a request made by the petitioner, respondent No.1 granted extension of time vide its letter dated 30th April 2008 for making payment of the second installment of lease premium till 24th August 2008. It has been stated in the writ petition by the petitioner that on account of global recession and economic meltdown in 2008, the petitioner could not make payment of the second installment and requested respondent No.1 to refund the payment already made by the petitioner, however, the refund was not made. In the meantime, respondent No.2 resolved to request the State Government to relax the provisions of the New Bombay Disposal Land Regulations, 1975 (hereinafter referred to as the **1975 Regulations**) on 14th July 2009 so as to give time extension to the allottees on account of downfall in the real estate market and also realizing that because of the downfall in the real estate, marketing rates of respondent No.1 were not satisfactory since 2008. Said resolution was made on the request made by several

allottees. Regulation 15 of the 1975 Regulations provides that respondent No.1 may, with previous approval of the Government, relax any or all of these regulations in a special case or cases. Resolution passed by the CIDCO requesting the State Government to relax the regulations and extend the time for making deposit of installments by the allottees was approved by the State Government vide letters dated 4th March 2010 and 29th March 2010.

7. It is the case set-up by the petitioner that in view of the request of respondent No.1 to the State Government seeking approval to relax the regulations permitting extension of time to make deposit of installments in case of certain other allottees, the petitioner continued to make applications/prayers to respondent No.1 for issuing a letter granting extension.

8. Respondent No.1 wrote a letter on 15th September 2011 to the State Government requesting them that Regulation 5 read with Regulation 15 of the 1975 Regulations be invoked for condoning the delay caused in making the payment of second installment of lease premium by the petitioner in respect of the three subject plots. The State Government, thereafter wrote a

letter to respondent No.1 on 31st October 2012 calling upon the respondent No.1 to furnish certain information such as (a) what were the existing rates of the plots allotted to the petitioner, (b) what was the rate of interest determined by the CIDCO for extension of time, (c) whether the current sale price of the plots was more than the sale price plus interest, (d) what is the effect of not depositing the second installment within the prescribed time as per Rules and (e) whether the said allotment cannot be automatically cancelled ? The letter dated 31st October 2012 also required the CIDCO to furnish information as to in whose possession the plots were at the relevant time.

9. Respondent No.2 again wrote a letter on 27th May 2015 seeking certain information relating to current market price of the plots allotted to the petitioner and amount of lease premium along with the late fee etc. The State Government again wrote a letter on 26th September 2016 requiring the Corporation to submit a detailed report to the Government after verifying as to what would serve the financial benefit to the CIDCO. Thereafter respondent No.2 submitted a brief note through its letter dated 1st August 2017 stating therein, *inter alia*; that during the recession period the Corporation had considered the request

made by many other allottees and vide resolution dated 14th July 2009 had urged the State Government to condone the delay beyond maximum permissible time prescribed in Regulation 5 of the 1975 Regulations, whereupon the State Government had approved the decision of the Board of CIDCO vide letters dated 4th March 2010 and 29th March 2010. The brief note submitted through letter dated 1st August 2017 by CIDCO also stated that the petitioner had withdrawn its earlier decision of surrendering the subject plots and requested the Corporation to grant extension of time for making the payment of the second installment for all the three subject plots without charging any interest or at a discounted rate of interest for the extendable time period. The note further stated that the said request was made by the petitioner on account of the then prevailing recession. Brief note mentions various correspondences made by the State Government with the Corporation and accordingly, submitted necessary information.

10. The brief note submitted by respondent No.1 through the letter dated 1st August 2017 to the State Government also noted that in case regularization of the subject plots by charging delayed payment charges is made, the Corporation can earn a

total revenue of Rs.66,42,76,927/- and further that the rate of recovery will be more than the rate per square metre received by the Corporation in the recent scheme. The note also stated that in case the Corporation prefers to cancel the allotment of subject plot by way of forfeiture of 25% of the balance lease premium and thereafter re-tender the plots, there is no guarantee that the Corporation may receive such rates, due to ongoing recession. In the light of the said observations, the Corporation, vide its brief note appended to the letter dated 1st August 2017 proposed to regularize the allotment of subject plots by condoning the delay beyond the maximum time as prescribed in Regulation 5 of the 1975 Regulations by charging the delayed payment charges as per the terms and conditions of the allotment letter and as per the calculation details submitted to the Government. The relevant extract of the brief note appended by the CIDCO along with its letter dated 1st August 2017 addressed to the State Government is quoted hereinbelow:

"2. Whereas, the details provided to the State Govt., vide our above referred letter dated 18.05.2016 & 14.10.2016 in respect of the total amount including the Delay Payment Charges that has accrued for the period from the stipulated date of payment of the 2nd installment i.e. from 25.02.2008, up to 31.10.2016 for the subject 03 plots is as follows:

TABLE – B

Sr. No.	Plot No.	Sector	Area in m ²	Total Lease Premium in Rs.	DPC Amount in Rs. up to 31.10.2016	Total Amount incl. DPC in Rs.	Rate /m ² incl. DPC in Rs.
1	6	8	1790.28	14,08,56,724/-	9,19,89,629/-	23,28,46,353/-	1,30,061/-
2	7	8	1788.80	14,07,40,280/-	9,19,18,879/-	23,26,59,159/-	1,30,064/-
3	23	7	1459.65	12,03,63,761/-	7,84,07,654/-	19,87,71,415/-	1,36,177/-
TOTAL AMOUNT Rs.				40,19,60,765/-	26,23,16,162/-	66,42,76,927/-	

As can be seen in TABLE-B above, in consideration of the total amount receivable to CIDCO including the Delay Payment Charges, the rate per m² for these 03 plots varies from Rs.1,60,061/- per m² to Rs.1,36,177/- per m².

Whereas, as can be seen in TABLE-A above, the rates received from the 06 R+C plots in the recently launched scheme varies from Rs.91,006/- per m² to Rs.1,31,031/- per m².

3. *It is pertinent to state that, in case of regularization of the subject allotments of 03 plots by charging the Delay Payment Charges, the Corporation can earn a total revenue of Rs.66,42,76,927/-. Further, the rate of recovery as can be seen in TABLE-B above will be more than the rate per m² received by the Corporation in the recent scheme mentioned in Sr.No.1 above.*

4. *Whereas, in case, the Corporation prefers to cancel the subject allotment by way of forfeiture of 25% of the balance lease premium of all the 03 plots and thereby retender the plots, there is no guarantee, that the Corporation may receive such rates, due to the ongoing recession.*

Proposal:

In light of the above facts, it is proposed to regularize the allotment of the subject 03 plots to condone the delay beyond the maximum permissible extendable time period as prescribed in Chapter-IV, Regulation-5 of the then prevailing regulation i.e. as per NBDLR-1975 by charging the Delay Payment Charges (DPC) as per the terms & Conditions of the Allotment Letter and as per the calculation details submitted to the State Govt., vide our above referred letter dated 18.05.2016 & 14.10.2016."

11. The matter was thereafter considered by the State Government and the State Government communicated its decision to CIDCO vide its letter dated 1st August 2018 stating therein that, "in the present matter you are hereby informed to take steps as per the option suggested by the CIDCO, which would be financially beneficial to the CIDCO." The letter dated 1st August 2018 is on record at page 97 to 102.

12. The notings and the decision appended with the said letter dated 1st August 2018 reveals that it was noticed by the State Government, *inter alia*; that if the allotment of subject plots is cancelled and recourse to re-tender was taken then there was no possibility of getting additional rates in the present economic recession situation and that the CIDCO was likely to suffer financial loss during re-tender process. The relevant extract of the notings and the decision as appended with the letter dated 1st August 2018 addressed by the State Government to CIDCO is extracted hereinbelow:

"08. Considering the aforesaid facts, it becomes clear that pursuant to the directions given by the Principal Secretary (U.D.1) on Page No.22 of the Noting Subject, the CIDCO has given below-mentioned opinion:-

A) The amount of remaining installments towards 3 plots situated at Sector 7 and 8 at Ghansoli, allotted to M/s.Trishul Construction Company has not been paid within the prescribed time period and

therefore, if the allotment of the aforesaid plots is cancelled and if the re-tender process is implemented then, as there is no possibility of getting additional rates in the present economic recession situation, the CIDCO is likely to suffer financial loss in the re-tender process.

B) Therefore, instead of implementing re-tender process for the aforesaid plots, if the excess period after the additional time period determined for paying remaining installments in respect of the plots as per Regulation No.5 of Appendix 4 of the New Bombay Disposal of Lands Regulation, 1975, is condoned and if the lease premium amount of the plot together with late fee (Up to the date 31.10.2016) is recovered as and by way of second installment towards the said plots, then, the CIDCO would get financial benefit. (As shown in Statement-B).

Hence, in view of the aforesaid opinion given by CIDCO, the proposal to implement re-tender process as mentioned in Point No.(A) or to inform the CIDCO to take steps as mentioned in Point No.(B), in the matter of the aforesaid plots, is submitted for appropriate order.

(Signature illegible)

23.01.2018

D.O./(Shree Thorve)

CM Secretariat – File No.1527 dated 12.03.2017

Presented by JS/DS : Shri

Seen by Sec. : Shri

Finally seen by Pr.Sec : Shri

(Signature illegible)

12.03.

(Illegible)

It is proposed to instruct the CIDCO to implement accordingly, the very option, which the CIDCO has informed that it is financially beneficial for it.

(Signature illegible)

A.S. (Shri Khatkale) *(Signature Illegible)*
(25.01.2018)

D.S. (Shri Yadav) *(Signature Illegible)*
(27.01.2018)

A.C.S. (U.D.-1)
Hon'ble Chief Minister
(Signature Illegible)

P.S. (U.D./15)
(Signature Illegible)
3/4

DS15

UD/10
(Signature Illegible)
05.04.2018

(Signature Illegible)
05.04.2018

// True Copy //

*Photocopies of the documents in the
matter made available under the
Right to Information Act.
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13. Thus, it is the case set up by the petitioner that the proposal made by CIDCO that if the lease premium amount of plots is recovered by way of realising the second installment after condoning the additional period for paying remaining installment as per regulation 5 of 1975 Regulations and late fee is also recovered, then the CIDCO would get financial benefit. According to the petitioner, the only option left with the CIDCO was to condone the delay and accept the second installment of the lease premium along with the applicable late fee.

14. We may note that the relevant portion of the noting and the decision of the State appended with the letter of the State Government, dated 1st August 2018 has been extracted from the

official translation of the said document furnished by the Official Translator of the High Court, a copy of which was also provided to the parties.

15. The writ petition was, thus, filed initially with a prayer to issue direction to CIDCO to issue necessary demand letter with respect of second installment of the lease premium of the subject plots however, during pendency of the instant petition, CIDCO took a decision to cancel the allotment which was communicated to the petitioner by means of letter/order dated 30th January 2024 which is also impugned in the writ petition. It is in these background facts that the instant writ petition has been filed with a prayer to quash the decision of the CIDCO as embodied in its communication dated 30th January 2024 cancelling the allotment of subject plots and also for issuing direction to CIDCO for issuing the demand letter for making deposit of the second installment along with the late fee etc. and thus, to regularize the allotment of the subject plots.

(C) Submission on behalf of the petitioner :

16. It has been argued by Mr.Navroj Seervai, learned Senior Advocate espousing the cause of the petitioner that the

impugned decision of respondent No.1 cancelling the allotment of the subject plots is contrary to the directives contained in the letter of the State Government dated 1st August 2018, whereby the State Government had not only accepted the proposal submitted by the CIDCO but has also directed the CIDCO to act accordingly. He has stated that thus, the cancellation of allotment of subject plots by respondent No.1 was impermissible in view of the provisions contained in Section 154 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as the **MRTP Act**) which according to Mr.Seervai provides that any directive or instruction issued by the State Government under Section 154 of the MRTP Act are not only binding on the planning/development authority but it is the duty of such authorities to carry out such direction or instruction within the time limit, specified in such directions or instructions.

(D) Submission on behalf of respondent No.1 – CIDCO:

17. The prayers made in the writ petition have been vehemently opposed by Mr.Janak Dwarkadas, learned Senior Advocate representing respondent No.1- CIDCO, who has contended that prior to the formal decision of cancellation of subject plots on 30th January 2024, CIDCO had invited fresh

tenders in September 2018, March 2019 and October 2022, however, the said process of re-tendering the plots in question was never challenged by the petitioner in any Court of law. It is, thus, his submission that the moment the CIDCO decided to re-tender the subject plots firstly in September 2008 and thereafter in March 2011 and October 2022, decision on the letter of the State Government dated 1st August 2018 was taken by the CIDCO and accordingly, the said decision of the State Government was acted upon by the Corporation and hence, now at this juncture, it is not open to the petitioner to challenge the order cancelling the allotment.

18. Mr. Janak Dwarkadas has also argued that from the facts and circumstances of the case, it is clear that the communication/letter dated 1st August 2018 has been issued by the State Government in exercise of its powers under regulation 15 of the 1975 Regulations and thus, it is not a "directive" under Section 154 of the MRTP Act and it is so also for the reason that the petitioner, in its letter dated 1st November 2024 addressed to the CIDCO has referred to the letter of the State Government as an "order" and not as a "directive". According to Mr. Dwarkadas, thus, the communication dated 1st August 2018 made by the

State Government to the CIDCO cannot be termed as a “directive” within its meaning under Section 154 of the MRTP Act and hence, the alleged non-compliance with the alleged directive contained in communication dated 1st August 2018 cannot be pleaded as a ground to challenge the impugned cancellation of the allotment orders in respect of the subject plots.

19. Another submission made on behalf of respondent No.1 CIDCO is that the CIDCO, till date, has not informed or assured the petitioner that despite non payment of second installment, and its continuing defaults, the allotments made in the year 2007 shall be regularized. It has also been contended on behalf of respondent No.2 that the Board of CIDCO resolved on 4th January 2024 that the financially beneficial option for CIDCO was to cancel the petitioner’s allotment by forfeiting the earnest money deposit and 25% of the paid lease premium and thereafter re-tender the plots.

20. In sum and substance, the petition has been opposed on behalf of respondent No.1 on the basic premise that the communication made by the State Government to CIDCO on 1st August 2018 is not a “directive” in terms of the provision

contained in Section 154 of the MRTP Act; rather it is referable to regulation 15 of the 1975 Regulations. Another noticeable submission made by Mr. Dwarkadas is that vide communication dated 1st August 2018, the Urban Development Department of the State Government responded to CIDCO informing it to choose the alternative which is financially beneficial to CIDCO and accordingly, Board of CIDCO took a decision in its meeting held on 4th January 2024 to cancel the allotment of subject plots made in favour of the petitioner by forfeiting the earnest money deposit and 25% of the paid lease premium which was found to be financially beneficial option for the Corporation and accordingly, the decision to cancel the allotment of re-tender the subject plots by CIDCO is in tune with what has been observed by the State in its communication dated 1st August 2018.

21. Further submission on behalf of the CIDCO is that the subject plots were allotted through tender process in the year 2007 and now because of lapse of such a long period if the lease rights in respect of the subject plots are settled with the petitioner on the old rates offered by it, the same would not be in public interest for the reason that it will result in heavy loss to the CIDCO on account of escalating price in the real estate

market. According to Mr. Janak Dwarkadas, the Board of Directors of the CIDCO decided to cancel the allotment in its meeting held on 4th January 2024 considering various aspects including the fact that if the delayed payment charges per square metre are calculated upto 31st October 2023 the valuation of Plot No.23, Sector 7 will be 1,73,575/- per sq. metre, valuation of Plot No.6, Sector 8 shall be 1,65,965/- per sq. metre and that of Plot No.7, Sector 8 would be 1,65,972/- per sq. metre, whereas, market price received by CIDCO for Plot No.16, Sector 8, which is opposite to Plot No.23, Sector 7 was Rs.3,63,636/- per sq. metre, in recent past and since Plot Nos.6 and 7 in Sector 8 are at 50 mtr. wide road, the said plots are likely to fetch the average rate of Rs.3,12,776/- per sq. metre which was the price received in recent past in respect of the plots situated at 50 mtr. wide road in Ghansoli.

22. According to Mr. Janak Dwarkadas, it is, thus, clear that the rate per square metre along with the delayed payment charges for subject plots is much less than the current market price. He has cited an order dated 29th April 2004 passed by a Division Bench of this Court in ***Mahalaxmi Mahila Sahakari Grahak Sanstha Maryadith Vs. The State of Maharashtra & Ors*** in

writ petition (L) No.115 of 2004. The order dated 24th July 2024 passed by this Court in writ petition No.728 of 2011 in ***the case of Discovery Properties & Hotels Pvt. Ltd. Vs. Ministry of Urban Development*** has also been cited by Mr.Janak Dwarkadas, wherein the Court considered the difference of amount in the past rate and the offer made by the applicant in the year 2007 and refused to grant stay on the process of e-auction by observing that the award of contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction, and in arriving at a decision, commercial considerations are paramount.

(E) Arguments made by Mr. Seervai in rejoinder:

23. Refuting the submission made on behalf of Mr.Janak Dwarkadas on behalf of the CIDCO, Mr. Seervai, representing the petitioner has argued that the communication dated 1st August 2018 is referable only to Section 154 of the MRTP Act and a plain reading of the language occurring in Section 154 makes clear that it is mandatory for any planning/development authority to comply with the directions issued by the State and in the present case the direction contained in letter dated 1st August 2018 by the State Government has been clearly defied,

as such the impugned action on the part of the respondent in cancelling the allotment of subject plots is illegal being in clear violation of mandate contained in Section 154 of the MRTP Act. He has also submitted that so far as the submission made by Mr. Janak Dwarkadas that the communication dated 1st August 2018 is referable to regulation 15 of the 1975 Regulations is concerned, the said provision permits the Corporation with previous approval of the Government to relax any or all the regulations in a special case or cases and since the proposal submitted by the CIDCO was approved by the State Government by its communication dated 1st August 2008, whereby CIDCO was instructed to act in accordance with the proposal submitted by it before the State Government, hence, the said submission is of no avail to CIDCO to defend the impugned decision whereby the allotment of the subject plot has been cancelled. He has also stated that regulation 5 of the 1975 Regulations permits the Managing Director of CIDCO to extend the period for depositing the installments, on payment of interest, by the intending lessee at the rate to be approved by the Corporation by a general or specific order, however, period of payment of both installments from time to time shall not exceed 12 months in all and

accordingly, the communication contained in the letter dated 1st August 2018 cannot be said to be referable to regulation 5 read with regulation 15 of the 1975 Regulations.

24. As regards the submission made on behalf of the CIDCO that if the petitioner is permitted to deposit the second installment along with delayed payment charges and condonation of delay, the same may result in financial loss to CIDCO, Mr. Seervai has vehemently argued that when a contract is to be evaluated, the mere possibility of more money in the public coffers, does not in itself serve public interest and further that the blanket claim by any public authority claiming loss of public money cannot be used to forgo contractual obligations, especially when it is not based on any evidence or examination. He, thus, submits that the Courts need to have proper understanding of public interest keeping in view the fact that larger public interest of upholding contracts and fairness of public authorities is also relevant consideration. In this regard he has placed heavy reliance on ***Vice Chairman & Managing Director, City and Industrial Development Corporation of Maharashtra Ltd. & Anr. Vs. Shishir Realty Pvt. Ltd. &***

Ors.¹. He has also placed reliance on an order passed by the Hon'ble Supreme Court in ***Discovery Properties & Hotels Pvt. Ltd. Vs. The Ministry of Urban Development & Ors.²***

25. Mr. Seervai has also relied upon the Division Bench judgment of this Court in ***Trimbak Joma Thakur (since deceased) through his LR and heirs Dashrath Trimbak Thakur & Ors. Vs. Principal Secretary, Urban Development Department & Ors.³, Sea Kunal Corporation Pvt. Ltd. Vs. Municipal Corporation and Ors.⁴, Nishant Karsan Bhagat Vs. City and Industrial Development Corporation of Maharashtra Ltd. & Ors.⁵***, to emphasis that any directive issued by the State Government under Section 154 of the MRTP Act is binding on the planning/development authority, which has to be necessarily carried out by such authority and that there is no escape available to the planning/development authority from such directive.

(F) Issues:

26. On the basis of the facts and circumstances which can be

¹ 2021 SCC OnLine SC 1141

² SLP (C) No.17012 of 2024 order dated 7th August 2022

³ 2022(4) Mh.L.J. 457

⁴ 2019 SCC OnLine Bom 349

⁵ 2022 SCC OnLine Bom 1758

culled out from the pleadings of the respective parties available on record and the submissions made by the learned Counsel representing the respective parties, the following issues emerge for our consideration and decision:

(a) Whether the communication dated 1st August 2018 made by the State Government to respondent No.1 is binding upon respondent No.1 being referable to Section 154 of the MRTP Act ?

(b) As to whether there exists any dispute between the State Government and respondent No.1 in respect of the communication made by the State Government dated 1st August 2018 which requires final decision to be taken by the State Government in terms of the provisions contained in Section 154(2) of the MRTP Act ?

(G) Discussion:

27. The fate of this petition hinges around the purport and meaning of the communication dated 1st August 2018 made by the State Government to respondent No.1 – CIDCO. We have considered the different views expressed by the learned Counsel for the petitioner and the learned Counsel representing respondent No.1 – CIDCO in respect of the said communication. As already noticed above, learned Counsel for the petitioner has emphasized that the communication dated 1st August 2018 is a

directive issued by the State Government to CIDCO under Section 154 of the MRTP Act and hence, it is binding, whereas it has been argued by learned Counsel representing respondent No.1 that the said communication is not a directive in terms of the provision contained in Section 154; rather it is a communication which is referable to regulation 5 and regulation 15 of the 1975 Regulations.

28. For appropriately appreciating the aforesaid rival contentions, we need to quote section 154 of the MRTP Act which reads as under:

154. Control by State Government.

(1) Notwithstanding anything contained in this Act or the rules or regulations made thereunder, the State Government may, for implementing or bringing into effect the Central or the State Government programmes, policies or projects or for the efficient administration of this Act or in the larger public interest, issue, from time to time, such directions or instructions as may be necessary, to any Regional Board, Planning Authority or Development Authority and it shall be the duty of such authorities to carry out such directions or instructions within the time-limit, if any, specified in such directions or instructions.

(2) If in, or in connection with, the exercise of its powers and discharge of its functions by any Regional Board, Planning Authority or Development Authority under this Act, any dispute arises between the Regional Board, Planning Authority or Development Authority, and the State Government, the decision of the State Government on such dispute shall be final.

We also need to extract regulation 5 and regulation 15 of the 1975 Regulations, which are as under:

Clause 5 of New Bombay Disposal of Lands Regulations reads as follows:

Payment of premium:

- (1) *The premium agreed to be paid by the Intending Lessee shall be paid in two equal instalments: the first instalment shall be paid within the month from the receipt of acceptance by the Corporation of this proposal and the second instalment shall be paid within two months from such receipt of acceptance.*
- (2) *The Managing Director may in a deserving case, extend either of the foregoing periods on the payment of interest by the Intending Lessee at the rate to be approved by the Corporation by a general or specific order:*

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

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

Provided further that if there shall be default by the Intending Lessee in the payment of first instalment of the premium, the agreement concluded between the Corporation and the Intending Lessee shall stand determined and the earnest money deposited by the Intending Lessee shall stand forfeited to the Corporation without prejudice to the rights of the Corporation to recover compensation for loss or damage, if any, suffered in consequence of such default.

15. Relaxation of Regulations: *The Corporation may, with the previous approval of the Government, relax any or all of these regulations in special case or cases.*

29. A perusal of regulation 5 of 1975 Regulations reveals that the said regulation provides for payment of premium. According to regulation 5(1) the premium agreed to be paid by the lessee is to be paid in two installments. The first installment is payable within a month from the date of receipt of acceptance by the

Corporation of the proposal and the second installment is to be paid within two months from such receipt of acceptance. Sub regulation (2) of regulation 5 permits the Managing Director to extend the period for payment of installments as provided for in regulation 5(1) on payment of interest by the intending lessee at the rate to be approved by the Corporation by a general or specific order.

30. However, the first proviso appended to regulation (5)(2) provides that the period of payment of both the installments of premium shall not exceed 12 months in all. The second proviso provides that the period of payment of first installment shall not exceed three months.

31. Regulation 15 permits relaxation of the regulations according to which the Corporation may, with the previous approval of the Government, relax any or all the regulations in a special case or cases.

32. In view of the two provisos appended to regulation 5(2) of the 1975 Regulations which are quoted above, since the time period extendable for making the deposit of both installments cannot exceed 12 months and in this case the said period had

expired long ago, therefore, operation of regulation 5 of 1975 Regulations in this case is out of question. Accordingly, the submission made by Mr. Janak Dwarkadas that the communication made by the State Government to the CIDCO in its letter dated 1st August 2018 is referable to regulation 5 read with regulation 15 of 1975 Regulations merits rejection, which is hereby rejected.

33. We will now proceed to examine as to whether the communication dated 1st August 2018 made by the State Government to CIDCO can be termed to be a directive in terms of Section 154 of the MRTP Act. It is to be noticed that the communication dated 1st August 2018 was issued by the State Government on certain correspondence between the CIDCO and the State Government. The State Government, from time to time has solicited various relevant information from CIDCO and ultimately, the CIDCO, vide its letter dated 1st August 2017 submitted a note/proposal to the State Government which contains only one proposal which has been quoted hereinabove in paragraph No.10. According to the said proposal, the CIDCO proposed to regularize the allotment of the subject plots by condoning delay beyond the maximum permissible extendable

time period as prescribed by regulation 5 and by charging delayed payment charges as per the calculation details submitted to the State Government. The proposal made by the CIDCO clearly stated that in case of regularization of subject plots by charging delayed payment charges, the Corporation can earn certain revenue and the rate of recovery in this manner shall be more than the rate per square metre, which may have been received by the Corporation in the recent schemes. The proposal further states that if the Corporation cancels the subject allotment and re-tenders the plots, there is no guarantee that the Corporation may receive such rates due to ongoing recession.

34. The State Government considered the said proposal and communicated its decision vide communication dated 1st August 2018 by clearly deciding to instruct the CIDCO to implement that very option which the CIDCO had informed that it was financially beneficial for it. The said fact is revealed by the noting and the decision enclosed with the communication dated 1st August 2018 made by the State Government to CIDCO which has already been extracted above in paragraph No.11. Reading of Mr. Janak Dwaradas of the said noting to the effect that the noting

mentions two opinions expressed by the CIDCO and as such decision of the State Government as contained in communication dated 1st August 2018 has to be read as giving an option to CIDCO to accept either of the two options, does not appear to be correct. The noting mentions two opinions at (A) & (B). The opinion (A) as mentioned in the noting, mentions about the opinion of CIDCO expressed in its proposal dated 1st August 2017 that if allotment of the subject plots is cancelled and if re-tender process is resorted to, then, there is no possibility of getting additional rates in the present economic situation and in such a situation CIDCO is likely to suffer financial loss in the re-tender process. The opinion (B) as extracted in the noting is clearly in continuance with opinion (A) which says that, "therefore instead of implementing re-tender process if excess period is condoned and if lease premium amount is recovered as and by way of second installment, then the CIDCO would get financial benefit.

35. Accordingly, in our opinion the noting does not contain discussion about two opinions or two proposals submitted by the CIDCO; rather it is only one proposal and the proposal was to allow condonation of delay for paying remaining installments

which was approved by the final authority in the State Government where it is recorded that "it is proposed to instruct the CIDCO to implement the very option, which the CIDCO has informed that it is financially beneficial for it". Such instructions or directives, in our opinion, can be given by the State Government in exercise of its powers conferred upon it by Section 154 of the MRTP Act. The said provision in an unambiguous terms contains a mandate that any directive issued by the State Government is not only binding on the planning/development authority but such directives are to be carried out by such authorities. There cannot be, thus, any escape by the authority from the directives which are issued by the State Government in exercise of its powers vested in it under Section 154 of the MRTP Act.

36. Even if the communication dated 1st August 2018 made by the State Government to respondent No.1 is construed to be referable to regulation 15 of 1975 Regulations, since the said regulation permits the Corporation to relax any of the regulations of 1975 Regulations with approval of the Government, said communication would be considered to be approval of the State Government to the proposal of the

Corporation which was contained in its letter dated 1st August 2017.

37. In view of the aforesaid discussion, whether the communication dated 1st August 2018 made by the State Government to respondent No.1 is to be treated to be a “directive” under Section 154 or the approval by the State Government to the proposal of the CIDCO under regulation 15 of the 1975 Regulations, it does not make any difference. To cancel the allotment of subject plots contrary to the contents of the communication dated 1st August 2018 made to CIDCO by the State Government, CIDCO cannot be permitted to take the plea that the communication dated 1st August 2018 is referable to regulation 5 read with regulation 15. In any case, any approval sought by the Corporation and accorded by the State Government as per the requirement of regulation 15 of the 1975 Regulations will be binding on the Corporation and any deviation there from will not be permissible by operation of Section 154 of the MRTP Act.

38. However, having observed as above, we may also note that the provision contained in Section 154 (2) of the MRTP Act,

which, though has not been argued on behalf of either of the parties, however, having regard to the over-all facts and circumstances of the case, in our opinion, is not only relevant but necessary to be taken note of. Section 154, in its entirety, has already been quoted above. Sub Section (2) of Section 154 provides that if in exercise of its powers and discharge of its functions by the planning/development authority under the MRTTP Act, any dispute arises between the planning/development authority and the State Government, the decision of the State Government on such dispute shall be final. From the records available before us on this petition and also in view of the discussion made hereinabove in the preceding paragraphs of this judgment, what we find is that as regards the exact purport of the decision expressed by the State Government in its communication dated 1st August 2018, there appears to be divergent views between the State Government and respondent No.1. The State Government, along with communication dated 1st August 2018 had enclosed the entire note sheet and the final decision, where the decision on the proposal of the CIDCO contained in communication dated 1st August 2017 was taken by the highest authority concerned of the State Government,

according to which the CIDCO was instructed to act upon the proposal which was made to it which was more financially beneficial to CIDCO.

39. However, the CIDCO, as argued on its behalf, has construed the said decision to mean that it was open to it to take decision in its discretion independent of the instructions contained in the communication dated 1st August 2018. During the course of arguments, it was emphasized by Mr. Janak Dwarkadas that the communication dated 1st August 2018 made by the State Government to respondent No.1 left the final decision to be taken by the CIDCO in its interest. From what has been observed by us above it is a clear case where we find that as to the true purport of the communication dated 1st August 2018 made by the State Government to respondent No.1 there exists divergent views and perspectives. Accordingly, since in terms of the provisions contained in sub section (2) of Section 154 in a situation of existence of such a dispute arising between the planning/development authority and the State Government, the decision of the State Government is final, we find it appropriate to refer the entire matter to the State Government to clarify the actual intended purport of the communication made

by it to respondent No.1 vide letter/communication dated 1st August 2018.

40. Since we find it appropriate to refer the matter to State Government to take decision in view of the dispute between the State Government and respondent No.1 on the actual purport of the communication dated 1st August 2018, which shall be final, we need not advert to the submissions made by the learned Counsel for the petitioner Mr.Seervai on certain other aspects of the matter such as non availability of the plea to CIDCO on account of the alleged expected financial losses in case the process of re-tender is not resorted to.

(H) Conclusion:

41. In view of the discussions made and the reasons given above, the writ petition is disposed of in the following terms:

a) State Government will take decision as to the actual purport of its decision contained in its communication made to CIDCO, dated 1st August 2018 in exercise of its powers available to it under Section 154(2) of the MRTP Act.

(b) Decision in terms of this order shall be taken by the State Government within two months from the date certified copy of this order is communicated to it.

(c) The State Government, before taking decision in terms of this order, shall provide an opportunity of making representation, both to the petitioner as also to the respondent No.1.

(d) Operation and implementation of the decision of respondent No.1 cancelling allotment of subject plots as communicated vide letter/order dated 30th January 2024 shall be kept in abeyance till decision by the State Government in terms of this order is taken.

(e) The decision of respondent No.1 communicated by letter/order dated 30th January 2024 shall, however, be subject to and abide by the final decision which may be taken by the State under this order.

(f) Costs made easy.

42. Interim application(s), if any, stands disposed of.

(AMIT BORKAR)

(CHIEF JUSTICE)