

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.728 OF 2011

Discovery of Properties & Hotels Private
Limited

Petitioner

V/s.

1. The Ministry of Urban Development,
Mantralaya, Mumbai.
2. City and Industrial Development
Corporation of Maharashtra Ltd.,
3. The State of Maharashtra through
Government Pleader.
4. Union of India

...Respondents

ALONGWITH
INTERIM APPLICATION NO.2050 OF 2025
IN
WRIT PETITION NO.728 OF 2011

Discovery of Properties & Hotels Private
Limited

In the matter between

Discovery of Properties & Hotels Private
Limited

*...Applicant
(Orig. Petitioner)*

V/s.

1. The Ministry of Urban Development,
Mantralaya, Mumbai.

2. City and Industrial Development Corporation of Maharashtra Ltd.,
3. The State of Maharashtra through Government Pleader.
4. Union of India

...Respondents

Mr. Malcolm Siganporia with Mr. D.Y. Chitnis i/b. M/s. Deepak Chitnis Chiparikar & Co., for the Applicant/Petitioner.

Mr. Ravi Prakash, Senior Advocate with Mr. Rahul Sinha & Mr. Soham Bhalerao i/b. M/s. DSK Legal, for Respondent No.2-CIDCO.

Smt. Prachi Tatake, Addl. GP, for Respondent Nos.1 and 3-State.

CORAM : ALOK ARADHE, CJ. &
SANDEEP V. MARNE, J.

DATED : 18 JUNE 2025.

ORDER (Per: Sandeep V. Marne, J.)

1) Petitioner is aggrieved by cancellation of allotment of plot by City and Industrial Development Corporation of Maharashtra Ltd. (CIDCO) by refusing to grant extension of time for payment of balance amount of lease premium. The representation made by the Petitioner to the State Government against CIDCO's decision is rejected by order dated 12 January 2011, which is also subject matter of challenge in the present petition.

2) In September 2007, CIDCO had floated tenders for grant of lease of Plot No.16 admeasuring 11,360 sq.mtrs situated at Kharghar, Navi Mumbai (**subject plot**) for the purpose of setting up a Five Star Hotel. The Petitioner submitted its bid and came to be adjudged as a successful bidder. On 10 December 2007, the subject Plot was allotted in favour of the Petitioner for lease premium of Rs.80,78,20,960/-, which was required to be paid in two installments. The Petitioner paid the first installment of Rs.41,64,10,480/- on 14 March 2008. Petitioner faced difficulties in making payment of balance lease premium and requested for grant of concessions and some correspondence ensued between the parties. CIDCO however rejected the suggestions made by the Petitioner on 3 February 2009 and directed payment of balance lease premium within the extended date. Petitioner invoked arbitration clause. CIDCO however insisted for forfeiture of the amount deposited by the Petitioner on account of its failure to pay the balance lease premium. Petitioner filed application under Section 9 of the Arbitration and Conciliation Act, 1996 seeking interim measures, in which order dated 8 October 2009 was passed granting liberty to the Petitioner to seek further extension of time for payment of second installment of agreed lease premium. The Petitioner accordingly made representation dated 14 October 2009 seeking extension of time. CIDCO however rejected the request of the Petitioner and by letter dated 30 October 2009, terminated the Agreement and forfeited the earnest money deposit as well as amount representing 25% of the total lease premium. Petitioner filed Appeal No.545/2009 challenging the order of the learned Single Judge dated 8 October 2009 in which order passed by the Appeal Court directing the Managing Director CIDCO to give personal hearing to the Petitioner. Petitioner was informed by letter dated 23 March 2010 by CIDCO that time for payment of lease premium was extended till 31 March 2010 in accordance with the directives issued by the State Government. Petitioner, however did not

make payment of the balance lease premium even during the extended period and proceeded to file Writ Petition No. 1940/2010 challenging termination letter dated 30 October 2010. The Division Bench of this Court granted liberty to the Petitioner to make representation to the State Government. Accordingly, Petitioner made representation dated 12 October 2010 before the State Government. By the impugned order dated 12 January 2011, the State Government has rejected the representation made by the Petitioner and has confirmed CIDCO's order dated 30 October 2009 terminating the Lease Agreement. The State Government has also rejected Petitioner's request for grant of extension of time.

3) By order dated 4 September 2015, this Court admitted the petition without granting any interim relief.

4) During pendency of the petition, CIDCO issued Tender for auction of 48 plots, which included the subject plot. Aggrieved by CIDCO's action in floating fresh tender in respect of the subject plot, Petitioner filed Interim Application (L) No. 22007/2024. By order dated 24 July 2024, this Court rejected the said Interim Application and refused to stay the auction process. Petitioner challenged the order dated 24 July 2024 passed by this Court before the Hon'ble Supreme Court by filing Special Leave Petition (C) No. 17012 of 2024. By order dated 7 August 2024, the SLP was dismissed rejecting the prayer of the Petitioner for payment of balance lease premium by observing that the Petitioner had repeatedly defaulted in making payment of balance lease premium on multiple occasions earlier.

5) The Petitioner has now filed Interim Application No. 2050 of 2025 seeking following reliefs:-

a. Pending the hearing and final disposal of the present Writ Petition, this Hon'ble Court order and direct Respondent No.2 to grant the Petitioner's request for change of use from Star Hotel to Residential Plus Commercial be allowed so as to allow the Petitioner to utilize the Plot to its full potential;

b. Pending the hearing and final disposal of the present Writ Petition, this Hon'ble Court order and direct Respondent No.2 to grant the Petitioner a No Objection Certificate to enable the Petitioner to mortgage the plot to obtain a loan or raise funds;

c. In alternative to the prayer (a) and (b) and pending the hearing and final disposal of present Writ Petition, this Hon'ble Court may be pleased to direct Respondent No.2 to refund the amount of Rs. 41,64,10,480/- (Rupees Forty One Crores Sixty Four Lakhs Ten Thousand Four Hundred and Eighty Only) alongwith interest at 15% p.a. to the Petitioner;

d. For such further and other relief as this Hon'ble Court may deem fit.

6) When Interim Application No. 2050/2025 was taken up for hearing, we have thought it appropriate to hear and decide the main Writ Petition, particularly considering prayer clause (c) of the Interim Application for refund of lease premium of Rs.41,64,10,480/-.

7) We have heard Mr. Sigamporia, the learned counsel appearing for the Petitioner, Mr. Prakash, learned Senior Advocate appearing for CIDCO and Ms. Tatake, Additional Government Pleader appearing for Respondent Nos.1 and 3-State.

8) So far as prayer clause (a) of the Interim Application No.2050/2025 is concerned, the same is for change of use of the Plot from Five Star Hotel to Residential plus Commercial use. Prayer clause (b) is

for issuance of NOC for mortgage of the subject plot for raising loans/funds. We find prayer clauses (a) and (b) of the Interim Application No. 2050/2025 to be wholly unsustainable. Petitioner's allotment of plot has already been cancelled by CIDCO vide order dated 30 October 2009. CIDCO's decision to terminate the allotment is upheld by the State Government by order dated 12 January 2011. The petition is pending before this Court for the last 14 long years without grant of any relief in favour of the Petitioner. Thus, there is no stay to the termination of the Lease Agreement. When CIDCO decided to auction the subject plot by floating fresh tender, Petitioner attempted to stall the same by filing Interim Application (L.) No. 22007/2024, which came to be dismissed by this Court by order dated 24 July 2024. The SLP filed by the Petitioner challenging the order dated 24 July 2024 has been dismissed by the Hon'ble Supreme Court by order dated 7 August 2024. It would be apposite to reproduce Apex Court's order dated 7 August 2024, which reads thus :-

1. Heard Mr. Sanjiv Sen, learned senior counsel appearing for the petitioner.

2. The challenge here is to the order dated 24.07.2024 passed by the High Court of Judicature at Bombay rejecting interim prayer sought by the Petitioner. The Court thereby permitted respondent no.2 to go ahead with the e-tender process, *inter-alia* for the plot proposed to be leased to the petitioner, as far back as on 20.11.2007. It would be necessary to note that the petitioner failed to pay the requisite second installment within the initial and the extended time frame, granted by the City & Industrial Development Corporation of Maharashtra Ltd. (respondent No. 2). Thereafter, the termination of the proposed allotment was ordered. The allottee continued to seek extension of time but failed to adhere to the extended time-line that was granted on two separate occasions. The authorities therefore decided to go for auction and e-tender including for various plots including Plot No. 16, which was proposed to be allotted to the petitioner.

3. Having considered the reasoning in the impugned order, notwithstanding the reliance placed by the learned senior counsel on the ratio in *Vice Chairman and Managing Director, City & Industrial Development Corporation of Maharashtra Ltd. & Anr. v. Shishir Realty Privated Limited & ors.* reported in 2021 SCC Online SC 1141, we are not inclined to interfere with the High Court order.

4. Only in order to garner more revenue, the authority cannot obviously deviate from the promise made to a promisee. But in the present case, we are confronted with the situation where, the allottee failed to make the payment of the second installment within the initially agreed period and also the extended period.

5. The senior counsel finally submits that the petitioner is prepared to pay the dues for the plot if the same is permitted. However, we have seen the history of the allotment staring at us for last 17 years and we are not persuaded to accept this submission made by the petitioner as they have defaulted on multiple earlier occasions. The Special Leave Petition is accordingly dismissed.

6. Pending application (s), if any, shall stand closed.

9) On account of rejection of Petitioner's prayer for stay of fresh auction process, CIDCO is free to auction the subject plot. It is therefore quite perplexing as to how Petitioner could have filed Interim Application No.2050/2025 seeking change of use of land from Five Star Hotel to Residential plus Commercial or seek NOC for mortgage of the subject plot for raising of amounts/funds. Petitioner's Lease Agreement in respect of the subject plot has been terminated. It is no longer an allottee in respect of the subject plot. CIDCO has not been restrained by this Court and by the Apex Court from re-auctioning the subject plot. In these circumstances, the Petitioner cannot seek the prayers for change of use of the plot or issuance of NOC for mortgage thereof. Prayer clauses (a) and (b) in Interim Application No. 2050/2025 are accordingly rejected.

10) Coming to prayer clause (c) of Interim Application No. 2050/2025, the same seeks direction against CIDCO for refund of amount of Rs.41,64,10,480/- paid by the Petitioner. Since the Petitioner is willing to accept refund of the premium paid by it to CIDCO with interest, the main petition seeking retention of allotment and lease in respect of the subject plot, in that sense, has become infructuous. This is the reason why we are disposing off the main petition while deciding Interim Application No. 2050/2025.

11) So far as prayer of the Petitioner for refund of the lease premium is concerned, it is seen that there is dispute between the parties about CIDCO's entitlement to forfeit EMD and 25% of the lease premium. In the light of existence of disputed questions of facts, the prayer of the Petitioner for refund of the lease premium cannot be decided in a petition filed under Article 226 of the Constitution of India.

12) Perusal of pleadings in para-11.9 of the Interim Application would show that CIDCO had shown willingness to refund amount of Rs.18,94,55,240/- to the Petitioner on 20 December 2012 and had issued a cheque for that amount drawn in the name of the Petitioner. Para-11.9 of the Interim Application reads thus :-

11.9. On 20 December 2012 Respondent No.2 issued a cheque amounting to Rs.18,94,55,240/- (Rupees Eighteen Crores Ninety Four Lakhs Fifty Five Thousand Two Hundred and Forty Only) in favour of the Petitioner, as balance amount return in terms of the LOA and its termination. This amount was not accepted and offered to be returned by the Petitioner. On 7 January 2013 the Petitioner's Advocates addressed a representation to Respondent No.2 and further called upon Respondent No.2 to return the entire EMD and 1st Instalment of Rs.39,14,10,480/- along with interest at the rate of 15% per annum from the date of payment till payment is made to the Petitioner.

13) Mr. Prakash would fairly submit that CIDCO is still willing to refund Rs.18,94,55,240/- to the Petitioner. Petitioner can accept the said amount on without prejudice basis. So far, its claim for refund of balance lease premium and interest is concerned, in our view, Petitioner needs to file a suit for recovery thereof. It appears that Petitioner had earlier filed application under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of Arbitrator and pleadings in the petition would indicate that the said petition was dismissed holding that there is no agreement for arbitration. In that view of the matter, the proper remedy for the Petitioner is to file a Civil Suit for recovery of balance amount of lease premium and interest.

14) We take note of three factors for disposing off the petition :-
(i) this Court did not grant any interim relief in favour of the Petitioner while admitting the petition, (ii) CIDCO is not restrained from re-auctioning the plot and (iii) Petitioner has now prayed for refund of paid lease premium. We are therefore of the view that no purpose will be served by keeping the petition pending for determining Petitioner's entitlement for retention of allotment of lease in respect of the subject plot. Instead, the Petitioner needs to exercise remedy for refund of paid premium with interest.

15) We accordingly proceed to pass the following order :-

- (i) CIDCO shall refund the amount of Rs.18,94,55,240/- to the Petitioner within a period of 4 weeks. The Petitioner is at liberty to accept the same without prejudice to its right of seeking refund of the balance lease premium and interest thereon.

- (ii) The Petitioner shall be at liberty to file a Civil Suit for recovery of balance lease premium paid by it alongwith interest thereon. The Petitioner would also be at liberty to pursue the prayer for payment of interest on refunded amount of Rs.18,94,55,240/-.
- (iii) If Petitioner files a Suit for refund of the lease premium with interest, the period spent in prosecuting the petition shall be considered for the purpose of Section 14 of the Limitation Act.
- (iv) All contentions of parties on Petitioner's entitlement for refund of entire lease premium with interest are expressly kept open to be raised and decided in Civil Suit.

16) With the above directions, the main Writ Petition as well as Interim Application No. 2050/2025 are **disposed of**.

[SANDEEP V. MARNE, J.]

[CHIEF JUSTICE]

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