



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

WRIT PETITION NO.14359 OF 2024

Shri Rajkumar Chandrasen Chavan
Age: 61 years Occupation : Business/Agriculturist,
Harihareshwar,
Post Harihareshwar, Taluka Shriwardhan,
District Raigad, Maharashtra - 402 110

... Petitioner

Versus

1. Managing Director
For CIDCO Limited,
CIDCO Bhavan, CBD Belapur,
Navi Mumbai - 400 614
2. Assistant Estate Officer,
Kharghar, CIDCO Nodal Office,
Sector-4, Kharghar, Navi Mumbai 410 210
3. Senior Development Officer,
1st Floor, CIDCO, Kharghar,
Navi Mumbai - 410 210
4. Law Officer
Legal Department
CIDCO Bhavan, CBD Belapur,
Navi Mumbai - 400 614
5. Advocate Pravin Pisal,
Court Commissioner,
Shop no.125, Mahanagar Palika Co.
Near Vasudev Balwant Phadke Natygruh,
Panvel, Raigad - 410 206

6. Minister for Urban Development
Having office at 4th Floor, Mantralaya,
Mumbai 400 020

7. Additional Chief Secretary
of Urban Development
Having office at 4th Floor, Mantralaya,
Mumbai 400 020.

.... Respondents

Adv. Rohan Surve a/w. Adv. Shrushti Vishwakarma, Adv. Shivank Singh i/b. Adv. Yogesh B. Dandekar, for the petitioner.

Mr. G. S. Hegde, Senior Advocate a/w Adv. P. M. Bhansali, Adv. Ganesh Bajpei, for the respondent-CIDCO.

Mr. N. C. Walimbe, Addl.G.P. a/w Mr. S. P. Kamble, AGP, for the respondent-State.

**CORAM : M. S. KARNIK &
S. M. MODAK, JJ.**

DATE : 27th MARCH, 2026

JUDGMENT (PER M. S. KARNIK, J.) :

1. This petition under Article 226 of the Constitution of India challenges the demand notice dated 25/06/2024 and 27/06/2024 issued by the respondent No.2-City and Industrial Development Corporation of Maharashtra Limited ("CIDCO", for short).

2. The facts of the case in brief are that CIDCO vide letter of allotment dated 26/06/2005 allotted plot of land bearing Plot No.104, admeasuring 450.090 sq. mtrs. situated at Sector 19, Kharghar, Navi Mumbai to one Mr. M.S.K. Mapara, the Proprietor of Pioneer Developers ("Mr. Mapara", for short). Mr. Mapara made substantial payment of consideration/premium to CIDCO against the letter of allotment and accordingly, CIDCO proposed to execute the agreement to lease of the said plot in his favour soon subject to payment of the balance premium and other charges and compliance of other formalities.

3. Mr. Mapara then offered to sale, assign and transfer all his leasehold rights, title and interest etc. in respect of the suit plot, free from all encumbrances in favour of Mr. Rajkumar Chandrasen Chavan viz. the petitioner herein, for the total and lump sum consideration of Rs.55,00,000/-. The petitioner thus purchased and acquired all leasehold rights, title and interest in respect of the said plot from Mr. Mapara under the "Agreement for transfer of Assignment of Rights" dated 08/12/2010, whereby Mr.

Mapara agreed to execute the tripartite agreement in favour of the petitioner.

4. The petitioner made substantial payment of Rs.29,00,000/- to Mr. Mapara and was also ready and willing to pay balance amount of Rs.26,00,000/- against the total consideration of Rs.55,00,000/- to Mr. Mapara.

5. CIDCO entered into and executed a registered agreement of lease dated 20/10/2010 thereby granting the leasehold rights, title and interest with respect to the said plot in favour of Mr. Mapara on the terms and conditions and for the premium, etc. as stated in the agreement of lease. CIDCO also delivered the actual and physical possession of the suit plot in favour of Mr. Mapara.

6. Mr. Mapara refused to perform his part of the contract, therefore the petitioner filed Special Civil Suit No.377 of 2011 before the Civil Judge, Senior Division, Panvel for declaration, specific performance and injunction against Mr. Mapara and CIDCO in respect of the said plot along with an application for

temporary injunction against the defendants below Exhibit-5

praying for the following reliefs :-

"a. That pending the hearing and final disposal of the suit, the Defendants, their agents, servants, employees, representative, officers and/or any other person/s claiming through or under them be restrain by an order of temporary injunction on from dealing with and disposing of the suit Plot to any other person or party or in manner creating third party interests with respect to the Suit Plot.

b. That pending the hearing and final disposal of the suit, the Defendant their agents, servants, officers, employees, representatives, officers and/or any other person/s claiming through or under them be restrained by an Order of temporary injunction from transferring and/or executing Conveyance and/or the Tripartite Agreement of the Suit Property in favour of third party and restraining from approving building plan and specifications over the suit property and/or restraining from carrying out any construction activities whatsoever any nature over and/or any part thereof on the suit plot."

7. The Trial Court partly allowed the application below Exhibit-5 for temporary injunction pending the decision of the suit. The defendants (Mr. Mapara and CIDCO) were restrained from disposing or transferring the suit property to any other person, till the disposal of the suit.

8. The learned Trial Court, by the judgment and decree dated 17/11/2018 allowed the suit for specific performance. The

petitioner was directed to deposit balance amount of Rs.26,00,000/- in the Court within a period of 30 days. The petitioner and Mr. Mapara were directed to specifically perform the contract dated 08/12/2010 in respect of the suit plot. Mr. Mapara was permanently restrained from dealing with or disposing of the suit plot or from creating any third party rights, title or interest therein.

9. The petitioner complied with the order of deposit. The petitioner thereafter filed special execution proceeding being Special Darkhast No.107 of 2019 against the judgment debtor before the Executing Court. We must hasten to add that an averment is made in the petition that by an order dated 30/09/2023 passed by the Executing Court, a Court Commissioner was appointed to perform the following duties :-

- “(i) To execute Tripartite Agreement of suit property
- (ii) To secure necessary permission, sanctions from CIDCO
- (iii) To perform every duty apart from above duties which are required for effective implementation of decree.”

The averment made by the petitioner is not controverted by the respondents in the affidavit-in-reply filed.

10. In view of the aforesaid order, the Court Commissioner vide letter dated 31/01/2024 addressed to Mr. Mapara requested to comply with all the terms and conditions of CIDCO for execution of tripartite agreement in favour of the decree holder viz. the petitioner in respect of the said plot.

11. The petitioner by a letter dated 22/03/2024 addressed to CIDCO brought it to their notice that as per the Board Note : Item No.14 in the Board meeting dated 12/02/2024 about the guiding principles to be followed for implementation of the recommendations of committee appointed with regard to the issues faced by Project Affected Persons (PAP's) and developers of Navi Mumbai and consolidated policy for grant of time extension in construction period. It was pointed out that the delay in completing the construction was due to court case.

12. The petitioner by his letter dated 22/03/2024 informed CIDCO that the said provision is applicable to the petitioner's case.

It was pointed out that there was a restraint order passed by the Trial Court against the defendants which included CIDCO. It was therefore pointed out that the Additional Lease Premium ("ALP", for short) has to be levied at 0%.

13. The petitioner again vide letter dated 22/05/2024 placed all the facts on record in respect of the subject matter. CIDCO by a letter dated 25/06/2024 addressed to the Court Commissioner demanded ALP of grand total of Rs.80,72,507/- after considering 50% waiver on applicable ALP under Amnesty Scheme towards grant of extension of construction period from 20/10/2014 to 31/12/2024.

14. The petitioner through an advocate's notice dated 01/07/2024 requested CIDCO for execution of the Tripartite Agreement as per the order passed by the Trial Court.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER :

15. Learned counsel for the petitioner submitted that the demand notice of CIDCO is completely contrary to the circular of

CIDCO inasmuch as it is due to the pending Court proceedings and due to circumstances beyond the control of the petitioner that the construction could not commence. It is submitted that there is no fault on the part of the petitioner. It is submitted that this is a fit case where the ALP ought to have been levied at 0% for the entire period as it was not possible for the petitioner to commence construction.

SUBMISSIONS OF MR. HEGDE, LEARNED SENIOR ADVOCATE FOR CIDCO :-

16. Mr. Hegde, learned Senior Advocate for CIDCO on the other hand invited our attention to the detailed affidavit-in-reply affirmed by Mr. Pritamsigh B. Rajput, working as Divisional Estate Officer, CIDCO.

17. Learned Senior Advocate submitted that CIDCO is the owner of the said land and had allotted the said land to Mr. Mapara on lease basis. CIDCO had merely executed an agreement of lease with Mr. Mapara for giving him permission to enter upon the concerned land and complete the construction. The letter of

allotment provides for period of four years for completing the construction and in breach thereof, CIDCO is entitled to either cancel the lease/allotment letter or accept the additional lease premium (ALP) for extending the period of construction.

18. That the entire transaction is governed by the Navi Mumbai Disposal of Lands (Amendment) Regulations, 2008 ("Regulations", for short). Regulation 10 provides that the intending lessee, i.e. Mr. Mapara in the present case, shall not transfer, wholly or partly, the benefits and interest, he derives in respect of the plot agreed to be leased to him unless intending lessee on whom such rights are transferred performs and observes all the conditions stipulated in the agreement to lease.

19. That in the present case the agreement to lease dated 20/10/2010 executed between CIDCO and Mr. Mapara, it was provided that the building should be constructed within four years. It was also provided in clause 5 and 6 that on failure to complete the construction within the stipulated period, either the agreement could be terminated or the time could be extended for construction

on payment of ALP.

20. Since Mr. Mapara had not completed the construction within the stipulated period, the said agreement was either liable to be rejected or the time for completing the construction extended on payment of ALP and this additional lease premium had to be observed by the present petitioner who is the transferee, as per Regulation 10.

21. Though CIDCO was party in the suit filed by the petitioner against Mr. Mapara, the relief which was granted in the said suit was directing the said Mr. Mapara to accept the balance payment and execute necessary document for transferring his right in favour of the petitioner. The said judgment does not bind CIDCO to execute a transfer of the leased land without observing their own regulations which has the force of law.

22. The relief granted in the said suit amounts to merely putting the petitioner in a position in which he would have been, had the original allottee Mr. Mapara executed all the documents to complete the transfer. The petitioner is not entitled to seek further

relaxation of the regulation as he is merely a person seeking transfer of the interest in the allotment letter issued to Mr. Mapara.

23. The said relief is akin to a person who seeks execution of a tripartite agreement for transfer of rights of the original allottee in his/her favour. In such cases CIDCO is entitled to insist upon demanding the additional lease premium in compliance of the Regulation 10 of the Regulations.

24. The petitioner has relied upon the board resolution which provides for waiver of ALP in case there was an order of injunction for restraining the original allottee from carrying out constructions on the said plot. The petitioner had sought an interim relief for restraining construction on the said plot, yet the same was not granted and only an interim order for restraining creation of third-party rights was granted by the Court. In such event the original allottee was at liberty to proceed with the construction and having failed to do so, CIDCO is entitled either to terminate the agreement or accept ALP for extension of time.

25. The entire process adopted by the petitioner is to circumvent the provisions of the Regulations and seek transfer of the plot in his favour without payment of additional lease premium. That in the event such transfer is permitted without payment of ALP, then the same shall be violative of Regulation 10.

26. That if such transfers are affected, it will not be possible for CIDCO to recover any amount from the transferee (original allottee) as there is no security available for CIDCO to recover such amount of ALP. The present case is like a situation where a flat purchaser files a suit against erstwhile member of the society and adds society as a party to the suit. The suit is decreed and the flat is directed to be sold/transferred to the purchaser. The question then would arise that whether the society can be directed to waive the arrears and other dues of erstwhile member and also waive the transfer charges, merely because the society was party to the suit. There cannot be such waiver. Further, if such transfers are permitted, then in such eventuality the society will not be able to

recover its dues from the erstwhile owner as there is no security available for recovering the same.

27. There is no privity of contract between the petitioner and CIDCO at present and in any case if the allottee seeks transfer of the lease in his favour, he is mandated to comply with the Regulation 10, which imposes upon him to observe all the conditions stipulated in the agreement to lease which also provides for extension of time to complete construction on payment of ALP.

28. Thus, the petitioner is liable to pay the ALP as demanded.

CONSIDERATION :

29. We have heard Mr. Rohan Surve, learned counsel for the petitioner, Mr. G. S. Hegde, learned Senior Advocate for CIDCO and learned Additional Government Pleader for the State.

30. The controversy turns on the application of Regulation 10 to the facts of the present case. In the context of the application of Regulation 10 it would also be necessary to refer to some relevant provisions of the Regulations which read thus :-

“7. Completion of building, factory, structure or other work within the prescribed time: The Intending Lessee shall complete the building, factory, structure or other work, for which the plot is allotted, within the period of Four years from the date of Agreement to Lease and giving License/Permission to enter upon the plot, provided that the building or buildings to be so constructed shall not be less than 50% of the Floor Space Index granted to the plots agreed to be leased under Regulation 4 (iii) and shall not be less than 75% of the Floor Space Index granted to the other plots.

8. Permission for extension of time: If the Intending Lessee does not complete the construction within the time stipulated in Regulation 7 for the reasons beyond his control, the Managing Director may permit extension of time for completion of buildings, factory, structure or other work, on payment of additional premium as may be determined by the Corporation from time to time:

Provided that the extension of time will be given for entire balance FSI for one year at a time:

Provided further that if the construction is not commenced on plot upto and within 4th year of extension, the Agreement to Lease shall be terminated and the plots shall be resumed with immediate effect. However, this proviso is not applicable to the plots allotted under Regulation 4 (i) and to the plots allotted to the Displaced Persons under 12.5% Scheme, provided such plot has not been transferred.

9. Termination of Agreement to Lease and revocation of licence: In case the intending Lessee (a) fails to obtain the development permission, commence and complete the construction of a building or buildings, factory, structure or other works within the period stipulated for the same in the Regulation 7 or within the period as may be extended by the Corporation, (b) fails to observe any of the conditions of the Agreement to Lease, (c) fails to proceed with the construction work with due diligence, the Corporation shall have the powers to terminate the Agreement to Lease and revoke the license granted therein to the intending Lessee for entering upon the plot, in which case all erections and materials, plants and things upon the said plot shall belong to the Corporation

without making any compensation or allowance on account of such erection materials, plants, things and without making any payment to the intending Lessee for refund or repayment of any premium paid by such Intending Lessee or otherwise to continue the allotment of the said plot with the Intending Lessee on payment of such fine or premium, over and above the additional premium, which shall be payable under these Regulations, as may be decided by the Corporation.

10. Restrictions against transfer of rights derived under the Agreement to Lease: The Intending Lessee shall not transfer wholly or partly the rights, benefits and interest he derives in respect of the plot agreed to be leased to him, provided that nothing contained herein shall apply If the Intending Lessee, after execution of Agreement to Lease, shall perform to the satisfaction of the Corporation the following conditions :

- i. The Intending Lessee pay to the Corporation the Transfer Charges at the rate as may be fixed from time to time, subject to a minimum of Rs.5000.
- ii. In the instruments by which the Intending Lessee transfers his rights, benefits and interest in respect of the plot agreed to be leased to him, he shall impose upon the person to whom such rights are transferred, to perform and observe all the conditions stipulated in the Agreement to Lease:

Provided further that in case of plots agreed to be leased under Regulation 4 (iii), transfer of such rights shall not be permitted.

Explanation: (i) The Intending Lessee may, with the prior written permission of the Managing Director, mortgage the plot to the Central Government, State Government, Life Insurance Corporation of India, the Maharashtra State Finance Corporation, the Nationalized Bank, Employer of the Intending Lessee or any other Financial Institutions as may be approved by the Corporation from time to time, for obtaining a loan for paying the lease premium to the Corporation in respect of the said plot and for constructing the building/buildings, factory on the said plot in accordance with the plan approved by the Town Planning Officer, provided that such mortgage can only be created after the execution of Agreement to Lease.

(ii) Transfer of rights derived under the Agreement to Lease shall mean and include the transfer of share or shares by the

shareholders of a Company registered under the Companies Act, 1956 (I of 1956) or by the members of a Co-operative Housing Society registered under the Maharashtra Co-operative Societies Act, 1960 or by the partners of a Partnership Firm registered under the Indian Partnership Act, 1932, in which case the Transfer Charges as is allocable to the extent of the share or shares so transferred or at the rate as may be determined by the Corporation from time to time, shall be recovered.”

31. At this stage itself it would be pertinent to refer to the decision of the Board Meeting with reference to the issues faced by the PAPs and developers of Navi Mumbai and consolidated policy for grant of time extension in construction period. The relevant portion reads thus :-

“III. Delay due to enquiry/audit/court cases

As per provisions of BR 11885 dated 07.07.2017, the ALP was levied at 0% for the entire period when the licensee was restrained from commencing/continuing construction due to enquiry/CAG audit para/court case/order of judicial authority. This clause was amended vide BR 12209 dated 19.07.2019, wherein the waiver was extended only to cases if the delay has occurred due to litigation wherein CIDCO is made a party. It is observed that in some cases, the property is attached by Competent Authority such as SEBI, MPID court etc. wherein CIDCO is not made a party and the litigation is involving financial irregularities by the licensee or involving third party. However due to such attachment by competent authority, the licensee is restrained from commencing/continuing construction on the plot and as such this period shall be excluded from calculation of ALP.

Considering the facts stated above, the ALP shall be levied at 0% for the entire period when the licensee was restrained from commencing/continuing construction due to enquiry/CAG audit

para/court case/order of judicial authority ”

32. The facts in the present case are peculiar. CIDCO had allotted the said plot to Mr. Mapara by a letter of allotment dated 26/06/2005. Mr. Mapara had made a substantial payment of consideration/premium to CIDCO against the letter of allotment. CIDCO proposed to execute the agreement to lease of the said plot in his favour soon subject to payment of the balance premium and other charges. CIDCO had executed a registered agreement of lease dated 20/10/2010 granting leasehold rights, title and interest with respect to the subject plot in favour of Mr. Mapara. CIDCO delivered the actual and physical possession of the suit plot in favour of Mr. Mapara. Mr. Mapara then offered to sale, assign and transfer all his leasehold rights, title and interest etc. in respect of the said plot in favour of the plaintiff for a total consideration of Rs.55,00,000/-. Accordingly on 10/06/2010 a sum of Rs.11,00,000/- was paid to Mr. Mapara and a receipt was executed. This transaction was prior to the CIDCO executing the agreement of lease with Mr. Mapara. Mr. Mapara acting in

furtherance of the aforesaid contract, entered into and executed a formal agreement for transfer of assignment of rights dated 28/11/2010 in favour of the petitioner and thereby agreed to sale, transfer and assign all his leasehold rights, title and interest and upon the said plot in favour of the plaintiff. There were some disputes as a result of which the plaintiff had to file a suit for specific performance against Mr. Mapara and CIDCO. As indicated earlier the Trial Court allowed the application for interim injunction whereby the following order came to be passed :-

“Application is allowed with costs.

Defendants are restraining from disposing of or transferring suit property to any other person till disposal of the suit.

33. Thereafter, the suit for specific performance came to be decreed in favour of the petitioner and the petitioner was directed to deposit the remaining sum of Rs.26,00,000/- in the Trial Court. The petitioner filed proceedings for execution of the decree of specific performance.

34. The stand of CIDCO is that the time for completing the construction could be extended on payment of ALP and this ALP

had to be paid by the petitioner who is the transferee, as per Regulation 10. No doubt Regulation 10 provides that the transferee is bound to comply with all the conditions which the lessee of CIDCO has to abide by.

35. Let us consider a situation where there was no litigation pending between the petitioner and Mr. Mapara. In such a situation if the construction is not completed within a period of four years, CIDCO may have well been justified in demanding the ALP for extension of time to complete the construction. The stand of CIDCO is that Mr. Mapara should have proceeded with the construction as the only restraint by the Trial Court while granting the injunction was that Mr. Mapara should not transfer or create any third party rights in the property. It is therefore the argument of Mr. Hegde for CIDCO that either Mr. Mapara or the petitioner should have completed the construction within four years and merely because CIDCO was a party to the suit will not waive the condition of completion of the construction within a period of four years.

36. Present is a case where even before the lease agreement was entered into between Mr. Mapara and CIDCO, Mr. Mapara had transferred his rights and interest in the said property in favour of the petitioner. CIDCO is not objecting to such a transfer. CIDCO is recognising the transfer subject to the petitioner paying the ALP for completing the construction. The petitioner says that it was impossible for him to commence the construction in view of the fact that Mr. Mapara was not ready to perform his part of the contract, and therefore the petitioner was left with no other alternative but to file a suit. There is nothing on record to indicate and it is not even the stand of CIDCO that the suit between the petitioner and Mr. Mapara was collusive.

37. Pursuant to the agreement of lease and the order of allotment by CIDCO, the possession of the suit plot was with Mr. Mapara. The petitioner was seeking specific performance of the contract and therefore till such time the suit is decreed, there was no question of the petitioner applying for a building permission or completing the construction within a period of four years. The

petitioner's claim was disputed by Mr. Mapara and it was only crystallised after the suit for specific performance was decreed in favour of the petitioner. The petitioner then paid the balance consideration which was directed to be deposited in the Trial Court. Even after the decree was passed, Mr. Mapara did not execute the necessary agreement and therefore the petitioner had to file execution proceedings in the course of which ultimately the decree was executed.

38. For CIDCO to expect the petitioner to start the construction within the stipulated period of four years in terms of Regulation 7 is unjustified. Further, in our view the stand of CIDCO that since Mr. Mapara did not complete the construction within a period of four years and therefore they are entitled to charge the ALP from the petitioner is unfair and unjust.

39. In terms of Regulation 10, the petitioner has to perform and observe all the conditions stipulated in the agreement of lease. However, the question of payment of ALP by the petitioner will have to be considered in the facts of this case. The benefit of the

Board Resolution that the ALP shall be levied at 0% for the entire period when the licensee was restrained from commencing/continuing construction due to Court case/order of judicial authority will have to be given to the petitioner.

40. We would have probably approached the matter differently had Mr. Mapara pursuant to the agreement entered into with the petitioner handed over the physical possession of the said plot to the petitioner. In the present case the petitioner was placed in possession of the suit plot pursuant to the execution of the decree. CIDCO was very much a party to the suit. Merely because there is no privity of contract between the petitioner and CIDCO is no ground to deny relief to the petitioner in the present facts. Though the petitioner steps into the shoes of Mr. Mapara and is expected to observe all the conditions stipulated in the agreement to lease in terms of Regulation 10, the fact remains that the petitioner would be in a position to comply with the terms and conditions only after the decree was executed. All along Mr. Mapara was resisting the suit and thereafter the execution

proceedings. Expecting the petitioner to suffer the consequences of breach committed by Mr. Mapara for no fault of the petitioner would be harsh and hence CIDCO's insistence of payment of ALP by the petitioner is arbitrary. It is open for CIDCO to make a claim against Mr. Mapara if permissible in law.

41. We therefore do not have any hesitation in allowing this writ petition and the same is accordingly allowed in terms of prayer clause (a) which reads thus :-

“(a) This Hon’ble Court be pleased to issue a Writ of Certiorari under Article 226 and 227 of Constitution of India or any other writ and/or directions in the nature of Writ of certiorari and entire records and proceedings relating to Demand Notice dated 25th June 2024 and 27th June 2024 passed by Respondent no.2 be called and after examining the legality and propriety thereof, this Hon’ble Court be pleased to quash and set aside the said Demand Notice dated 25th June 2024 and 27th June 2024.”

42. The writ petition is disposed of. No costs.

(S. M. MODAK, J.)

(M. S. KARNIK, J.)