



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4856 OF 2018  
WITH  
INTERIM APPLICATION NO.4369 OF 2023  
WITH  
INTERIM APPLICATION NO.7943 OF 2023

1. M/s. PVP Star Hotels Private Limited,  
a Company duly incorporated under the  
Provisions of the Indian Companies Act,  
1956, having its current Corporation Cum  
Office address No.27, 2<sup>nd</sup> Floor, Mahavir  
Center, Plot No.77, Sector-17, Vashi,  
Navi Mumbai, District- Thane,  
Pin Code- 400703.

2. Mr. Sanjeet Raut,  
an Indian Inhabitant, an adult,  
Director of Petitioner No.1,  
having his address at No.27, 2<sup>nd</sup> Floor,  
Mahavir Center, Plot No.77, Sector-17,  
Vashi, Navi Mumbai, District- Thane,  
Pin Code- 400703.

.... Petitioners

V/s.

1. The State of Maharashtra,  
Through the Secretary, Urban Development  
Department, having office at Mantralaya,  
Mumbai- 400 032.
2. City and Industrial Development Corporation  
of Maharashtra Ltd., through its  
Vice Chairman and Managing Director,  
a Corporation having its registered office at  
Nirmal, 2<sup>nd</sup> floor, Nariman Point,  
Mumbai- 400 021 and other office at CIDCO  
Bhavan, CBD Belapur, Navi Mumbai- 400 014,  
District- Thane.
3. Manager (Town Services-I),  
City and Industrial Development Corporation

of Maharashtra Ltd., having office at  
CIDCO Bhavan, CBD Belapur,  
Navi Mumbai- 400 014, District- Thane.

.... Respondents

Mr. Milind Sathe, Senior Counsel a/w Mr. Bhushan Deshmukh i/by  
Mr. Shrikant Kherkar, for the Petitioners.

Smt. Tanu N. Bhatia, AGP for Respondent No.1-State.

Mr. G. S. Hegde, Senior Counsel i/by Ms. P. M. Bhansali, for Respondent  
Nos.2 & 3-CIDCO.

**CORAM : A.S. GADKARI AND  
SHYAM C. CHANDAK, JJ.**

**RESERVED ON : 21<sup>st</sup> FEBRUARY, 2025.  
PRONOUNCED ON : 13<sup>th</sup> MARCH, 2025.**

**JUDGMENT :- (PER SHYAM C. CHANDAK J.)**

. Present Petition filed under Article 226 and 227 of the  
Constitution of India, seeking the following substantive reliefs :-

(i) The Respondent Nos.2 and/or 3 are bound and liable  
to grant extension of time limit for the period from  
14.12.2012 to the period of 3 years from the date of Order,  
when such extension shall be granted to the Petitioner No.1  
to complete the development/construction of the suit plot  
without levying additional lease premium and without  
insisting on execution/providing of Bank Guarantee of any  
amount;

(ii) The impugned Show Cause Notice dated 30.09.2016,  
Termination Notice dated 24.04.2017, Order dated  
31.07.2017 i.e., condition to pay the additional lease  
premium, the Demand Notice/Order 02.01.2018 and the  
Termination Notice/Order dated 02.04.2018 issued by  
Respondent Nos.2 and/or 3, be quashed and set aside.

(iii) To command the Respondent Nos.2 and/or 3 to forthwith restore the possession of the suit plot with the Petitioners which the Respondent Nos.2 and/or 3 have taken back in their possession on dated 17.04.2018.

1.1) The aforesaid I.A. No.4369 of 2023 is seeking to amend the Petition to modify/change the registered address of Petitioner No.1 and to replace the said Petitioner No.2 with the Applicant No.2 therein.

1.2) The aforesaid I.A. No.7943 of 2023 is seeking to permit the Applicant therein to intervene in this Petition and I.A. No.4369 of 2023.

2) Heard Mr.Sathe, the learned Senior Counsel for the Petitioners, Smt.Bhatia, the learned AGP for Respondent No.1-State and Mr. Hegde, the learned Senior Counsel for Respondent Nos.2 & 3-CIDCO. Perused entire record.

2.1) None appeared for the Applicant in I.A. No.7943 of 2023 when taken up for hearing.

2.2) Rule. Rule made returnable forthwith and with the consult of learned counsel for the parties taken up for final hearing.

3) Facts in brief are that, in December 2006 the Respondent No.2 issued a tender bid as Scheme No. MM-1/02/2006/2007, in respect of its Plot Nos.15 and 16, admeasuring about 10377.50 sq. meters situated in Sector-15, CBD-Belapur Rode of Navi Mumbai, District Thane (**“the suit plot”**), to construct a “Star hotel” there. By way

of said scheme, Respondent No.2 invited offers by *interalia* representing Navi Mumbai as city of the future, stating many future projects including Airport, Water Transport etc. and representing/projecting Belapur, as the heart of Navi Mumbai. It was specifically claimed that the International Airport will link Belapur to major cities in the World.

3.1) In the said bid, the Application of M/s. PVP Ventures Pvt. Ltd. (“**the Original Allottee**”) was accepted by the Respondent No.2. Accordingly, an Allotment Letter dated 27.07.2007 was issued to the said allottee in respect of the suit plot against payment of Lease Premium of Rs.82,70,46,900/- and Misc. Charges of Rs.5,25,350/-. Petitioner No.1 was a subsidiary company of the said Allottee. Hence, said entire amount was paid by Petitioner No.1. The Respondent No.2 acknowledged the same by its receipts dated 27.07.2007, 03.09.2007, 01.10.2007 and receipt dated 01.10.2007 for Rs.5,25,350/- towards Misc. Charges. Later on, at the request of said M/s. PVP Ventures Pvt. Ltd. (the Original Allottee) and against the aforesaid payments, Respondent No.2, by its letter bearing Ref. No. CIDCO/MM-/PLT/Star Hotel/2007/417 dated 29.11.2007 transferred all the benefits in the suit plot in favour of Petitioner No.1, *Interalia* specifically mentioning that all the terms and conditions of the scheme booklet will remain unchanged and binding. This was followed by an Agreement to Lease

("the Agreement") of the suit plot, duly executed by Respondent No.2 in favour of the Petitioner No.1 and registered with a stamp duty of Rs.4,13,54,500/- and registration charges of Rs.30,000/-. Then the Respondent No.2 put the suit plot in possession of the Petitioner No.1. Since then i.e., from dated 14.12.2007, the Petitioner No.1 was in possession and occupation of the said plot.

3.2) Thereafter, the Petitioner No.1 applied for certain prior approvals those were needed to start the desired work and obtained an Approval Certificate dated 23.01.2009 from the Government of India, Ministry of Tourism, approval dated 30.01.2009 from the Maharashtra Tourism Development Corporation Ltd. ("MTDC"), provisional Registration Certificate dated 20.03.2009 from MTDC, Environmental Clearance Certificate dated 08.07.2009 from the Government of Maharashtra. Thereafter, the Petitioner No.1 started the activities (shore piling, excavation etc.) to develop the suit plot as a Star Hotel, as per the Agreement and building plan etc.

3.3) It is averred that, the International Airport and connected projects mentioned in the scheme document based on which the suit plot was offered for development were also expected to be started and completed as the same were backbone of the development in the area concerned. It is stated that unfortunately, there was slowdown in the

economy, leading to stalling of development activities across sector, especially in infrastructure and construction areas. As a direct fall out, the proposed projects in Navi Mumbai including International Airport and connected projects saw delay of few years in its implementation. Said projects in Navi Mumbai, especially those projects mentioned by the Respondent No.2, were vital for the development of the suit plot as the suit plot was located very close to the location of the Airport etc. In view thereof, the ability of the Petitioner No.1 to complete the development within stipulated time, frustrated.

3.4) As per the Agreement, the work was required to be commenced within 12 months and to be completed within 5 years from the date of the Agreement. The extension of time was allowed subject to payment of additional lease premium. It is averred that the Petitioners commenced the development work on time, but could not complete it within the stipulated 5 years period due to the aforesaid compelling circumstances. Hence, the Petitioner No.1 by its letters dated 27.11.2012, 09.02.2014 and 21.06.2016, addressed to the Respondent Nos. 2 & 3, requested for extension of the time to fulfill the obligations under the said Agreement.

3.5) However, the Respondent No.3 issued a notice dated 30.09.2016 to the Petitioner No.1 alleging delay in completion of the

work and called upon the Petitioner No.1 to show cause as to why the Agreement to Lease shall not be terminated and, possession of the suit plot be not taken back. The Petitioner No.1 by reply dated 4.01.2017 responded that show cause notice contending that, it is bad in law, hence, it be withdrawn forthwith. Since there was no response to the said reply, the Petitioner No.1 by its letter dated 27.04.2017, addressed to Respondent No.2, again responded to that show cause notice contending that, the Petitioner No.1 was entitled for extension of the time without levy of an additional lease premium. However, the Respondent No.3 by its notice dated 27.04.2017 threatened to terminate the Agreement to Lease and take forcible possession of the suit plot. The Petitioner No.1 resisted that notice by its reply dated 08.05.2017 and again requested to grant extension of time, as above. The Petitioner also wrote a letter dated 19.05.2017 to Respondent No.2 for the same purpose. Then, Respondent No.3 wrote a letter dated 01.06.2017 and fixed the hearing on the issue. By its letter dated 16.06.2017, Petitioner No.1 requested the Respondent Nos.2 and 3 to consider its aforesaid letters and address the said issue, accordingly.

3.6) In response, the Respondent No.2 conducted the hearing during which, the Petitioner No.1 and Respondent No.3 were heard. Thereafter, Respondent No.2 passed the Order dated 31.07.2017,

thereby the aforesaid show cause notice was withdrawn and the prayer for extension of the time was granted, subject to payment of additional lease premium and executing a Bank Guarantee of Rs.5 Crore. It is contended that, said Order dated 31.07.2017 did not deal with the submissions made on behalf of the Petitioner No.1. The Petitioner No.1, therefore again wrote a letter dated 12.09.2017 and requested the Respondent No.2 to consider its submissions and the genuine difficulty. In turn, the Respondent No.2 issued a letter/Order dated 13.11.2017 and partially modified the Order dated 31.07.2017. On this occasion, Petitioner No.1 was allowed a waiver of the additional lease premium for the period from dated 14.12.2012 to 01.07.2016 and granted a 3 years extension from dated 23.10.2017 to 22.10.2020, subject to execution of the Bank Guarantee. Yet by a letter dated 24.11.2017, the Petitioner No.1 requested the Respondent Nos.2 and 3 to allow the waiver of the additional lease premium up-to passing of the Order dated 13.11.2017 in place of up-to 01.07.2016 and requested to withdraw the condition to furnish the Bank Guarantee. In turn, the Respondent No.3 by its notice dated 02.01.2018 informed the Petitioner No.1 that, the submissions dated 24.11.2017 were not accepted by the Respondent Nos.2 and 3 and directed the Petitioner No.1 to pay the additional lease premium of Rs.16,91,56,705/- for extension of the period from date



01.07.2016 to 30.06.2018 and execute the Bank Guarantee of Rs.5 Crore and that, only then the modified Agreement shall be executed.

3.7) Therefore, the Petitioner No.1 by its letters dated 25.02.2018 and 26.03.2018 again requested the Respondent Nos.2 and 3 to grant waiver of the additional lease premium up-to 13.11.2017 and to grant the extension of time up-to 31.12.2021 without payment of the additional lease premium and also to withdraw the condition of the Bank Guarantee for the reasons stated in the said letter. However, the Respondent No.3 by his Notice/Order dated 02.04.2018 sought for termination of the Agreement and taking forceful possession of the suit plot on 17.04.2018 and conveyed that the Orders dated 31.07.2017 and 13.11.2017 stood withdrawn. The Petitioner No.1 opposed the said Notice/Order by its reply dated 09.04.2018 contending that, the calculation of the additional lease premium at Rs.16,91,56,705/- is incorrect etc. According to the Petitioner No.1 said amount should be totaling to Rs.12,40,56,975/-. Further, the Respondent Nos.2 and 3 were requested to withdraw the said Notice/Order and grant the extension of time without levying additional lease premium. It is stated that earlier, the Petitioner had applied for the extension of time by its letters dated 29.11.2012, 09.02.2014 and 21.06.2016. The said issue of extension was commenced on 29.11.2012 and finally it was decided by the Order

dated 31.07.2017 and later on reviewed by Order dated 13.11.2017. Thus, the Respondent Nos.2 and 3 took five years to decide the issue of extension of time. It is stated that, as per the policy BR No.11885 the CIDCO/Corporation is expected to dispose of an Application seeking extension of time, within 90 days from the receipt thereof, which it did not. Therefore, the Petitioners have throughout demanded for extension of the time without payment of the additional lease premium up to 13.11.2017.

3.8) It is stated that, the Respondent No.2 in its Order dated 31.07.2017, noted the say of the Petitioner that the Petitioner has sought extension of benefits arising out of the policy i.e., BR No.7825 dated 07.10.1998 and/or policy i.e., BR No.10149 dated 14.09.2009 and policy i.e., BR No.11628 dated 06.05.2016 as the Respondent Nos.2 and 3 have given the benefits based thereon to other licensees and have given extension of time without levying any additional lease premium. In the Order, the CIDCO Ltd./Respondent Nos.2 and 3 have accepted the abovementioned policy, but refused to extend the same benefits to the Petitioner on the flimsy ground that the grant of extension of time cannot be demanded as a matter of right by the Petitioner herein and that, the cases quoted by the Petitioner against the aforesaid policies are the specific cases. Therefore the benefits of those policies cannot be

made applied to the present case. It is stated that the abovementioned approach of the Respondent Nos.2 and/or 3 is discriminatory, arbitrary and partial, which is against the principles of law of equality and is in direct violation of the provisions of Article 14 of the Constitution of India. Thus, the Petitioner had made out the bonafide case for extension of the time without payment of the additional lease premium. Accordingly, the Order dated 13.11.2017 was passed thereby modifying the Order dated 31.07.2017. The said relief was well within the discretion and accordingly, full benefit arising out of the policy of the Respondents ought to have been granted. However, the Respondent Nos.2 and 3 have not given any response till date to the letter dated 09.04.2018 nor withdrew the alleged termination/Order dated 02.04.2018. It is stated that the Petitioners served the notice of this Petition on the date of its filing i.e., 16.04.2018 and immediately after filing thereof including that this Court allowed the production at 3 p.m. of 17.04.2018. However, the Respondent nos.2 and 3 contended that they have taken the possession of the suit plot. In turn, the Petitioners wrote a letter dated 17.04.2018 and denied the fact of taking the possession and called upon the Respondent Nos.2 and 3 to provide the details of the action of taking the possession. Therefore, Petitioners prayed to grant the aforesaid reliefs.

4) Respondent Nos.2 and 3 filed an Affidavit-in-Reply and resisted the Petition. They admitted the fact of the scheme and that, on accepting the original allottee as the highest bidder, the Agreement to Lease was executed with Petitioner No.1 and the latter paid the Lease Premium and Misc. charges. It is contended that thereafter, Petitioner No.1 was duty-bound to obtain the development permissions within six months, commence the construction within a period of 12 months and obtain the occupancy certificate within a period of five years from the date of execution of the Agreement to Lease. The Petitioner No.1 obtained the commencement certificate from Navi Mumbai Municipal Corporation on dated 18.09.2008. Thereafter the Petitioner No.1 only started the foundation work, which was later on abandoned. It is stated that, the Petitioner No.1 by its letter dated 29.11.2012 requested the Respondent No.2 to grant extension of time i.e., additional three years and waiver of the extension penalty. Therefore, the Respondent No.2 gave a letter dated 24.12.2012 and called upon the Petitioners to submit a detailed report as to the schedule of the construction and completion of the proposed Five Star Hotel on the suit plot. The Petitioners failed to submit that report. It is contended that on 31.05.2016 the Corporation/ Respondent No.2 received an email from one Mr. Ajay Midha, Director, Ray White India Pvt. Ltd. thereby offering to surrender the suit plot. In

response, the Respondent No.1 *vide* letter dated 22.06.2016, informed Mr.Ajay Midha that such a request should be submitted by the licensee only. In turn, one Mr. H.S.Song *vide* letter dated 21.06.2016 informed that he is one of the stakeholders and director of the Petitioner No.1 and that, the company does not intend to surrender the plot. Thus, by the said letter, the Petitioners have accepted that the suit plot changed the hands. It is contended that meanwhile, there was complete violation of the terms and conditions stated in the Agreement, by the Petitioners. Therefore, the Respondent No.1 issued the show cause notice dated 30.09.2016. The petitioners responded that show cause notice by their letter dated 04.01.2017, containing their detailed explanation. The petitioners informed that, the Petitioners latest shareholding in M/s. PVP Star Hotels is as follows : i) Navi Hotel, Murhaba, SPV (FDI) 97.36%, and ii) MAPE Advisory Group Pvt. Ltd., 02.64%. Thus, the Petitioners assigned their rights in the suit plot to other entities, without permission from the CIDCO, in violation of the Agreement and relevant regulation. That apart, the said reply was also not satisfactory. It is contended that, in the capacity of New Town Development Authority, the Respondent No.2 is required to ensure that the development of land takes place in a time bound manner, so as to benefit the general public.

4.1) Therefore and as per the rights vested in the Respondent No.2 under the Agreement, the Respondent No.2 issued the termination letter dated 27.04.2017, without prejudice to the rights of Respondent No.2, to claim further damages from the Petitioners towards the loss suffered by the Corporation due to the non-development/delay in the development of the suit plot. It is contended that there was no restraint upon the Petitioners to develop the said plot and the Petitioners were free to commence and complete the construction, if they had so desired. It is contended that the Petitioners were under obligation to act as per the terms and conditions stated in the Agreement to Lease. Therefore, the so-called delay by the CIDCO in the Airport project will not come to the rescue of the Petitioners. It is contended that in spite of various serious violations on the part of the Petitioners, in the interest of justice, the Respondent No.2 heard the Petitioners and passed the Order dated 31.07.2017. Thereafter, the Respondents considered the representation/letter dated 12.09.2017 given by the Petitioners and revised the said Order dated 31.07.2017. Nevertheless, the Petitioners by their letter dated 24.11.2017 requested for more relaxation and grant of extension of time with waiver of the additional lease premium up-to 31.12.2021 and withdrawal of condition of the Bank Guarantee of Rs.5 Crore. The Respondent by their letter dated 02.01.2018, informed the Petitioners

that their request was not acceptable. Further, it was informed that, the Petitioners shall pay the additional lease premium of Rs.16,91,56,705/- towards extension of time period from dated 01.07.2016 to 30.06.2018, within one month from the said letter and furnish the Bank Guarantee of Rs.5 Crore. The Petitioners received that letter on 03.01.2018, however, they failed to comply with that letter.

4.2) It is contended that, the role of the Corporation as a New Town Development Authority for Navi Mumbai, envisages development of essential physical, social, educational, health and recreational infrastructure. Development of the Star Hotel is a critical component of the city and Petitioners' inability to perform their obligations and absence of taking effective steps by them to develop the said plot, has deprived the city residents of an essential amenities which has further affected the economic development of the city. It is contended that the Petitioners have hoarded the said plot for financial gain and thereby, deprived the benefit thereof to the general public. It is contended that such developments of the amenities are vital for the growth and settlement of a new city like Navi Mumbai. Therefore, non-observance of the terms and conditions stated in the Agreement had a negative effect on the growth of the city. In this background, the Respondent No.2 cannot allow the Petitioners to hold the plot for their personal

gains against the objectives of the Respondent No.2. Hence, the Respondent No.2 decided to terminate the Agreement dated 14.12.2007 in the public interest. Accordingly, the Agreement was terminated and the license to enter upon the said land stood revoked. As a result, the Order dated 31.07.2017 and the letter dated 13.11.2017 issued to the Petitioner No.2 have been withdrawn and the possession of the suit plot has been taken on 17.04.2018, by recording a panchnama. It is stated that, the plot has been partly dug up for piling work. Therefore, the Respondent No.2 constructed a compound wall to prevent an accident or an untoward incident and any encroachment there. Therefore, the work of the said compound wall be approved by modifying the Order dated 17.04.2018, passed by this Court.

5) Mr. Sathe, the learned Senior counsel submitted that, the petitioners have paid more than Rs.82 Crore as lease premium and incurred more than Rs.25 Crore on the construction and ancillary activities on the suit plot. Therefore, there was no reason for the petitioners to willfully delay the hotel construction. He submitted that, the hotel construction was dependent on the infrastructural projects mentioned in the scheme of Respondent No.2, which itself were delayed. This fact was highlighted in the correspondence for Petitioners. Thus, there were compelling circumstances which made it difficult for



the Petitioners to complete the hotel construction, in a time bound manner and as per the Agreement.

5.1) Mr. Sathe submitted that, therefore, in the first application dated 29.11.2012 itself, the Petitioners requested for extension of time to fulfill the contract and relaxation in payment of the additional lease premium. As that application was not decided on time, the Petitioners were constrained to give more letters. Finally, the Respondent No.2 decided the said issues in the impugned the Order dated 31.07.2017. The said Order was then modified by the Order dated 13.11.2017. He submitted that, the aforesaid facts and circumstances indicate that, unreasonable time was consumed by the Respondent to decide the said issues, for which the Petitioners cannot be blamed.

5.2) Mr. Sathe submitted that the Respondent No.2 extended the time to fulfill the contractual obligations as reasonable case was made out for the same by the Petitioners. However, the Respondent No.2 unnecessarily imposed the liability to pay the additional lease premium and to furnish the Bank Guarantee of Rs.5 Crore. However, the Respondent Nos.2 and 3 withdrew the Orders dated 31.07.2017 and 13.11.2017 and took the possession of the suit plot without giving a chance of hearing. Thus, the said entire action is arbitrary and illegal.

5.3) Mr. sathe urged that the subject Agreement cannot be

terminated, without having regard to the conduct of the respective parties towards fulfillment of their obligations under the said Agreement and also towards the fulfillment of the obligations and/or representation based on which the Agreement was executed. He submitted that in the present case, the Respondent No.2 CIDCO Ltd. itself has miserably failed and/or neglected to ensure the implementation, execution and or completion of various projects, especially the international Airport and connected projects based on which the scheme was issued and the Agreement was executed. The terms of the said scheme document were mentioned in the letter of allotment and based on the same, the Agreement was executed. He asserted that, thus, there was a direct link between the execution and completion of various projects within time as mentioned in the scheme document of the CIDCO and completion of the Star Hotel by the Petitioner No.1. He submitted that, in similar circumstances the Respondent No.2 has invariably granted extension of time limit without imposing additional lease premium and/or without imposing condition of furnishing a Bank Guarantee. He submitted that, in the Order dated 31.07.2017 the Respondent No.2 agreed with the submission by Respondent No.3 that the Respondent No.2 has a policy of granting extension of time for a maximum period of 12 years beyond the initial period mention in the Agreement. Accordingly, the subject

Agreement, which expired on or around 13.12.2012, was extendable up-to 2024, by putting conditions on the Petitioners to complete the Star Hotel project within a time, but without asking for additional lease premium and executing a Bank Guarantee of Rs.5 Crore.

5.4) Mr. Sathe submitted that in the Order dated 31.07.2017, the Respondent No.2 observed that the market condition was very bad and in fact, when the CIDCO Ltd. floated tenders for three other plots, no response was received by the CIDCO Ltd. and therefore, it was also felt by the CIDCO Ltd. that when there is no buyer in the market, then in place of terminating the present agreement, it would be better to earn the additional lease premium by retaining the Agreement. This indicates that, the Respondent No.2 has abused its position in the circumstances. He submitted that, the lease premium was a foreign direct investment, therefore, calling back the Agreement set a bad precedent.

5.5) Mr. Sathe submitted that the Respondent Nos.2 and 3 are covered by the definition of the 'State'. However, before eviction of the Petitioners from the suit plot, the procedure stated in the Maharashtra Government (Premises) Eviction Act, 1956 was not followed. Therefore, the Order and action of taking possession of the suit plot by Respondent No.3, is illegal.

5.6) To support his submission Mr. Sathe relied upon a decision

in *Joshi Technologies International Inc. vs. Union of India & Ors.*<sup>1</sup> therein in paragraph 70.7 the Hon'ble Supreme Court held that, "*Writ can be issued where there is executive action unsupported by law or even in respect of a corporation there is denial of equality before law or equal protection of law or if it can be shown that action of the public authorities was without giving any hearing and violation of principles of natural justice after holding that action could not have been taken without observing principles of natural justice.*"

6) Mr. Hegde, the learned Senior counsel for Respondent Nos.2 and 3, on the other hand, emphatically submitted that, the petitioners failed to abide by the terms and conditions stated in the Agreement. However, considering the circumstances pointed out by the petitioners, the Agreement period was extended by imposing additional lease premium. Yet the petitioners created a dispute about quantification of the additional lease premium, relaxation in payment of the additional lease premium up-to 13.11.2017 and to withdraw the condition of furnishing the Bank Guarantee. In this regard whatever case was put up by the Petitioners, it was baseless or having no foundation. Therefore, the Respondent Nos.2 and 3 were compelled to withdraw the Orders dated 31.07.2017 and 13.11.2017 and take possession of the suit plot. Therefore, said action of the Respondents cannot be termed as arbitrary,

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1. (2015) 7 SCC 728.

illegal or violation of law. To buttress his submissions Mr. Hegde cited the following decisions.

(i) ***Sesa Sterlite Ltd. vs. State of Maharashtra and Another***<sup>2</sup>, therein the Petitioner could not proceed with the original project stated in the Agreement due to certain circumstances. Therefore, he proposed an alternative project. More than sufficient time was granted to the said Petitioner to consider undertaking the alternate project. Though the Petitioner stated that it desired to set up the alternate project, no effective steps in that direction were shown to have been taken. The Petitioner did not seriously consider undertaking any other alternative project. Therefore, the Division Bench of this Court declined to interfere with the decision to terminate the subject Development Agreement, passed by the statutory authority concerned.

(ii) ***Jaipur Vidyut Vitran Nigam Ltd. vs Mb Power (Madhya Pradesh) Limited***<sup>3</sup>. In this decision the Hon'ble Supreme Court referred the decision of the Madras High Court in ***Air India Ltd. vs. Cochin International Airport Ltd.***<sup>4</sup> and noted the following observations in paragraph 7 thereof :-

“7. ... The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. The State

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2. (2024) 2 AIR Bom R 625.

3. (2024) 8 SCC Bom 513.

4. (2000) 2 SCC 617.

can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process the court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should intervene.”

7) In *Joshi Technologies* (supra) the Hon’ble Supreme Court noted that, “... *there is no absolute bar to the maintainability of the writ petition even in contractual matters or where there are disputed*

*questions of fact or even when monetary claim is raised. At the same time, discretion lies with the High Court which under certain circumstances, can refuse to exercise.”*

7.1) In the above context, the Hon’ble Supreme Court noted the following observations from a decision in ***ABL International Ltd. vs. Export Credit Gurantee Corpn. Of India Ltd.***<sup>5</sup>, in paragraph 28 thereof.

“28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power [See: Whirlpool Corporation vs. Registrar of trade Marks, Mumbai & Ors. [1998 (8) SCC 1]. And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the court thinks it necessary to exercise the said jurisdiction.”

8) Looking at the settled position of law in the field and the

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5. (2004) 3 SCC 553.

rival submissions, what is significant in this case is, conduct of the Petitioners and the Respondents. Undisputedly, the Petitioner No.1 has paid the entire lease premium of Rs.82,70,46,900/- and Misc. Charges of Rs.5,25,350/-. The Agreement was registered on payment of stamp duty of Rs.4,13,54,500/- and regn. charges of Rs.30,000/-. Thereafter, within a reasonable time the Petitioners proceeded to obtain different statutory prior permissions which were essential to hit the ground and start the elementary work related to construction of the subject hotel, in conformity with law and the Agreement. On getting such approvals, the Petitioners started the ground activities. The Petitioners claimed that, post Agreement they have incurred about Rs.25 Crore in the ground activities and the development related works. This assertion is not denied by the Respondents. Thus, the total amount invested was more than Rs.100 Crore. Since the payment of the Lease Premium and Misc. charges, the Respondent Nos.2 and 3 have been using that entire amount without paying any interest. It is thus clear that, on account of the delay on the part of the Petitioners, they have not gained any pecuniary benefit against the investment of more than Rs.100 Crore.

9) As per the agreed terms and conditions in the Agreement, the Petitioner No.1 was duty-bound to obtain the development permissions within six months, commence the hotel construction within



a period of 12 months and obtain the Occupancy Certificate within a period of 5 years from the date of the Agreement. The Petitioners, however, did not comply with the said conditions. To subside this default, the Petitioners came with a specific plea that, after the Agreement there was slowdown in the economy, leading to stalling of development activities across sector, especially in infrastructure and construction areas. Consequently, the proposed projects in Navi Mumbai including the International Airport and the connected projects saw delay of few years in its implementation. Said projects in Navi Mumbai, especially those projects mentioned by the Respondent No.2, were vital for the development of the suit plot as the suit plot has been located very close to the location of the Airport etc. In view thereof, the ability of Petitioner No.1 to complete the development within time was frustrated. We have noted that, neither this assertion is specifically denied nor sufficiently challenged by the Respondent Nos.2 and 3. Needless to mention that since decades stared hotels are spread over across Mumbai city and nearby areas. Therefore, in the impugned Order dated 31.07.2017 the Respondent No.2 should have explained as to how the non-commissioning of the hotel in the agreed period affected the economic development of the city and the larger public interest. However, said Order is conspicuously silent about this aspect. As such,

we are not in unison with the submissions made by Mr. Hegde, the learned counsel that, the delay on the part of the Petitioners in completing the hotel project acted against the objective of the scheme and interest of Respondent No.2 thereunder.

9.1) The Order dated 31.07.2017 recorded that, “recently the Corporation (Respondent No.2/3) had invited for applications to sale of its three plots admeasuring 12,588.61 sqms., 16,055.97 sqms. and 10,000/- sqms. The last date for submission of the application was 06.07.2017. However, there was no response to the said marketing of the scheme.” Therefore, the authority who passed the said Order got inclined to extend the period of the subject Agreement instead of terminating the allotment and inviting new applications for the same. Surprisingly, this was the situation even after 10 years of the subject Agreement and after 5 years of the letter dated 29.11.2012 whereby the Petitioner No.1 had requested to extend the time of the Agreement. The suit plot is also admeasuring 10377.50 sqms. Thus, said fact supports the case of the Petitioners that, although huge development was planned and expected under the scheme, immediately it could not attract investors and fructify as intended. Therefore, it is clear that, the Respondent No.2 itself did not want to frustrate the purpose of its own scheme by calling back the Agreement as it would have adversely

affected its own interest.

10) Additionally, we note that, by delaying the hotel project the Petitioners have not gained any pecuniary or any other advantage against the Respondent No.2 because it was impossible to construct the said hotel in the year 2017 or within three years thereafter at the costs estimated for the initial period of 5 years during which the hotel was to be completely constructed. On the contrary, by that time, the said cost was considerably increased, roughly 2 to 3 times of the initial estimated cost. The impugned Order dated 31.07.2017, however, did not give any consideration to this aspect of the matter.

11) Considering the reasons stated in the Order dated 31.07.2017 for extension of the time of the Agreement, it appears that there is no certainty of getting an investor if the Corporation/ Respondent No.2 again invites applications for the suit plot for the intended development there. The Petitioners averred that, there is a foreign direct investment in this project. Attracting such investors is more beneficial for the cities like Mumbai as its helps generating income for the State and providing employment opportunities. Therefore, there was no point in cancelling the Agreement and taking possession of the suit plot by the Respondents.

12) No doubt, from the record it appears that the Petitioners

unnecessarily spent time in seeking exemption from paying additional lease premium towards extension of time from time to time. However, according to us it was an error on the part of the Petitioner No.1 in not paying the said amount because it did not allure to the benefit of the Petitioners and as matter of fact, they suffered substantial loss for it.

13) Record indicates that, the letter dated 29.11.2012 was the first attempt by the Petitioners to get an extension of time to fulfill their obligations under the Agreement. This application has been decided on 31.07.2017 i.e., after more than 4½ years of its submitting. We could not see any forcing reason to record that, the decision on the said letter delayed due to certain unreasonable conduct of the Petitioners or latches on their part.

14) The Order dated 31.07.2017 noted that, the Corporation has a policy for extension in construction period, as per BR No.11628 dated 06.05.2016, whereby extension can be granted for a maximum period of 12 years beyond initial 4 years, on payment of additional lease premium. However it is noted that, the request seeking such an extension can be considered only for reasons beyond control of the licensee, entirely at the discretion of the Corporation and extension of time cannot be demanded by the licensee as a matter of right.

14.1) However, from the discussion in the forgoing paragraphs we

are of the considered views that the said discretion has not been fairly exercised by the Respondent No.2/CIDCO. Because firstly, the CIDCO was struggling to get investors for its own scheme. Secondly, there was no certainty of getting new investor in a reasonable time to develop the suit plot post its re-auction. Thirdly, the Petitioners have invested more than Rs. 100 Crore in the project and have not earned any return thereon. Fourthly, the delay in implementing the Agreement in a time bound manner did not allure to the benefit of the Petitioners, on the contrary they will have to spent multiple times of the construction cost for the hotel estimated initially. Therefore according to us, the Respondent No.2 could have extended the time one more time. But at the same time, the Petitioners should have paid the additional lease premium for the delay in commissioning the hotel without any excuse.

15) Considered the settled law in the field, it is apparent that any statutory authority while exercising the delegated powers of the State, must be cautious that such an exercise of powers is not arbitrary in nature not only from the point of view of the person against whom said powers were exercised but also from the view point of the State which has given the authority to exercise said powers. In either of the case, an Order resulting from the exercise of such powers would be arbitrary. In the case in hand, the impugned Orders are arbitrary in

respect of both the sides, even if the said Orders appear to have been passed in favour of the State because it is failing in securing the interest which was intended to be protected. Out of the three years extension period, 7/8 months were covered by COVID-19 Pandemic. As such, we are of the view that equities are necessary to be balanced in this case.

16) At the end of the hearing Mr. Sathe, the learned Senior counsel, on instructions made a statement that the Petitioners undertake to pay all the necessary amounts to the Corporation and to construct the hotel within three years period or as may be directed by this Court. Considering the facts and circumstances of the case we hereby accept the said statement on record.

17) In view thereof the impugned Orders are liable to be set aside with a direction to restore the possession of the suit plot with the Petitioners. However, for not paying the additional lease premium Rs.16,91,56,705/-, the Petitioners are liable to pay a reasonable interest on the said amount, because according to the Petitioners said amount should be totaling to Rs.12,40,56,975/- and even that amount is not paid. Further, the Petitioners shall be duty bound to construct the hotel in three years period as directed hereinafter. Thus, the Petition succeeds.

17.1) Hence, following Order :-

1) The impugned Show Cause Notice dated 30.09.2016, Termination Notice dated 24.04.2017, Order dated

31.07.2017, the Demand Notice/Order 02.01.2018 and the Termination Notice/Order dated 02.04.2018 issued by Respondent Nos.2 and/or 3, are set aside and substituted as under.

i) The Petitioner No.1, i.e., M/s. PVP Star Hotels Pvt. Ltd. shall be granted waiver of additional lease premium for the period from dated 14.12.2012 to 01.07.2016.

ii) The Petitioners shall complete all the requirements and take all the permissions necessary to construct the Star Hotel at the suit plot as per the Agreement and complete the construction of the hotel and obtain the Occupancy Certificate within a period of three years from the date of receiving possession of the suit plot from the Respondent Nos.2 and/or 3, as stated by the Petitioners and noted in the forgoing paragraph 16.

iii) The aforesaid extension of three years time is subject to a condition that the Petitioners shall pay the additional lease premium of Rs.16,91,56,705/- for the period from 01.07.2016 to 30.06.2018, to the Respondent No.2 within four months from the date of this Order alongwith interest thereon from date 01.07.2018 till the date of this Order, as per the Rules and/or Regulations of the Respondent No.2/CIDCO.

iv) Petitioners shall also furnish the Bank Guarantee of Rs.5 Crore of any nationalized bank. If the Petitioner No.1

produces the Building Completion Certificate/Occupancy Certificate within the given time frame, the Bank Guarantee shall be returned back to the Petitioner No.1 and in case of any default, the Bank Guarantee shall be forfeited by the Respondent Nos.2 and/or 3. Said Bank Guarantee to be furnished within the said four months period.

v) On making the payment of Rs.16,91,56,705/- and furnishing the Bank Guarantee as above within the said four months period, the Respondent Nos.2 and 3 shall execute the modified Agreement to Lease and handover the possession of the suit plot to the Petitioners.

vi) In the event of the Petitioners failing in complying with the aforesaid directions, this Order shall stand vacated and the Termination Notice/Order dated 02.04.2018 issued by Respondent No.3, which is impugned herein, shall stand automatically restored, without reference to this Court.

2) Petition is allowed in the aforesaid terms. Rule is accordingly made absolute.

3) In view of disposal of the Petition, Interim Application Nos.4369 of 2023 and 7943 of 2023 do not survive and both the Applications are accordingly disposed off.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)